

**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 POST-HEARING BRIEF

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

PROCEDURAL HISTORY 10

STATEMENT OF FACTS 12

 A. Chicago And Its Uniquely Decentralized Graduate Education
 Program..... 12

 i. Unlike *Columbia*, Chicago has no Graduate School – but it does
 have common educational and research goals for its PhD
 students. 12

 ii. Because Chicago is extremely decentralized, the experiences of its
 PhD students vary greatly. 13

 B. Unlike The Finding In *Columbia*, The Relationship Between
 Chicago And Its Graduate Students Is Exclusively Educational. 14

 i. PhD Graduate Students learn to teach exclusively for their own
 education and future..... 14

 1. Departmental requirements for teaching graduate students
 to teach 15

 2. The extensive teaching experiences available to PhD
 graduate students ensure that PhD graduate students
 are not “thrust wholesale into” teaching
 opportunities, including in Chicago’s Core
 Curriculum. 19

 3. Matching PhD students to TA assignments and placing
 students in courses where they want to teach,
 ensures that students are not, like in *Columbia*,
 “thrust wholesale into” teaching opportunities. 23

 4. The mentoring of future faculty is a Chicago faculty goal
 for students who seek a future in academia. 24

 5. At Chicago, teaching students to teach starts early and may
 continue throughout the tenure of Chicago’s PhD
 graduate students..... 33

 a. Divisional and Departmental pedagogical courses
 are designed to teach teaching for parochial
 purposes. 33

 b. Divisions/Departments issue handbooks that teach
 students how to teach. 35

c.	The Chicago Center for Teaching is the centerpiece of Chicago’s pedagogical educational process.....	36
d.	The Writing Program	38
6.	Unlike in <i>Columbia</i> , PhD graduate students at Chicago are not “thrust wholesale into” teaching opportunities.....	39
7.	Notwithstanding the importance of learning to teach, Chicago ensures that research on the student’s dissertation is a priority; students are encouraged not to teach beyond their requirements.....	40
8.	Chicago does not support graduate students in order to benefit from their teaching; such benefits are a result of their experiential learning.....	41
9.	Unlike as found in <i>Columbia</i> , Chicago does not discipline or remove PhD students from teaching opportunities for poor performance.....	42
ii.	Because Chicago is first and foremost a research institution, learning how to research is paramount to PhD education.....	43
1.	At Chicago, a PhD Student Research Assistant is a graduate student doing lab research on his or her dissertation.....	43
2.	Graduate students decide which lab they wish to join.....	45
3.	Chicago trains graduate students in ethics to prepare them to be future scientists who may eventually run their own labs.....	47
4.	Mentoring of Lab Research Assistants	47
C.	Financial Support For PhD Students At Chicago	50
i.	Graduate Aid Initiative (“GAI”) Funding.....	50
ii.	Funding in the Physical Sciences Division and Biological Sciences Division.....	51
D.	Privileges Extended to PhD Students at Chicago Are Exclusively for Students.....	52
E.	For Numerous Reasons, Master’s Students And PhD Students Are Different, And Merely Sharing The Same Title For Certain Activities Does Not Create Commonality.....	53
F.	Non-Lab Research Assistants Are Voluntary, Non-Teaching And Non-Research Opportunities For PhD Students To Learn A Different Skill.....	54
G.	Workshop Coordinators Are Also Non-Teaching And Non-Research Experiences for Students to Volunteer for an “Organizational” Experience.....	55

H.	Teaching in Excess of the Academic Teaching Requirement Is Not Degree Related.....	57
ARGUMENT		59
A.	The University of Chicago’s PhD Students Are Not Employees Under <i>Columbia</i> ’s Common Law Agency Test.....	59
i.	Chicago’s graduate student TAs are not employees under <i>Columbia</i>	60
1.	Unlike in <i>Columbia</i> , teaching opportunities at Chicago are part of the academic curriculum, are accompanied by appropriate academic development opportunities, and are not intended as a benefit to the “business” of educating undergraduates.	60
a.	Because Chicago is primarily a research institution, its PhD students have fewer teaching requirements.....	66
b.	Chicago’s quarter system also reduces the time spent being a TA.	69
2.	Whatever benefit there is to Chicago and its faculty in fulfilling Chicago’s mission to teach its PhD students to teach and conduct research is an unintended consequence that does not negate Chicago’s exclusive reason for teaching its PhD Students.....	70
3.	PhD graduate student teaching opportunities at Chicago are not driven by undergraduate course requirements or enrollment, as PhD graduate students invariably teach courses that are related to their course of study.....	71
4.	TAs are not removed from their positions, even if they are struggling or inadequate; therefore, they are not under Chicago’s “control.”	73
5.	Unlike in <i>Columbia</i> , PhD students at Chicago receive their full stipends even when they cannot be a TA and, therefore, are not exchanging services for compensation.	74
ii.	Lab Research Assistants are not employees under <i>Columbia</i>	76
1.	Research Assistants are not subject to Chicago’s control because they choose their own areas of research.....	76
2.	Research Assistants do not perform services for compensation because they do not perform “defined tasks” as a condition of grant aid.	77

3.	Research Assistants are not exchanging services for compensation because they are guaranteed funding even if their area of interest is not covered by a research grant.	79
4.	Research Assistants receive extensive training and mentorship from Chicago.	81
iii.	The <i>Columbia</i> test of employee status is erroneous and must be reversed.	83
B.	PhD Graduate Students Who Are TAs And Conduct Research To Fulfill An Academic Requirement Do Not Share A Community Of Interest With Master’s Students, Workshop Coordinators, Non-Lab Research Assistants And PhD Students Teaching In Excess Of Their Requirements.....	88
C.	If An Election Is Directed, The Board’s Standard Voter Eligibility Formula Should Be Applied.	94
D.	If An Election Is Directed, The Parties Have Jointly Requested A Manual Ballot Election To Be Held On Multiple Days On Chicago’s Campus No Sooner Than October 17, 2017.....	97
E.	The Regional Director Should Investigate Whether The Petition Is Tainted By The Involvement Of Three Supervisors In The Petitioner’s Organizing Efforts.	98
CONCLUSION.....		101

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Adelphi University</i> , 195 NLRB 639 (1972)	83, 86
<i>American Cyanamid Co.</i> , 110 NLRB 89 (1954)	88
<i>B-W Construction Co.</i> , 161 NLRB 1600 (1966)	95
<i>Beverly Manor Nursing Home</i> , 310 NLRB 538 (1993)	94
<i>Bill Heath, Inc.</i> , 89 NLRB 1555 (1950)	94
<i>Brown University</i> , 342 NLRB 483 (2004), <i>holding overruled by Columbia University</i> , 364 NLRB No. 90 (2016)	85, 86, 87
<i>Dejana Industries, Inc.</i> , 336 NLRB 1202 (2001)	99
<i>The Grand</i> , 197 NLRB 1105 (1972)	88
<i>Greenspan Engraving Corp.</i> , 137 NLRB 1308 (1962)	8, 94
<i>Gulf States Asphalt Co.</i> , 106 NLRB 1212 (1953)	94
<i>Harborside Healthcare, Inc.</i> , 343 NLRB 906 (2004)	99
<i>Harvard College</i> , 269 NLRB 821 (1984)	89
<i>Leland Stanford Junior University</i> , 214 NLRB 621 (1974), <i>holding overruled by Columbia University</i> , 364 NLRB No. 90 (2016)	66, 83

<i>Macy’s Missouri-Kansas Division v. NLRB</i> , 389 F.2d 835 (8th Cir. 1968)	94
<i>NLRB v. Yeshiva University</i> , 444 U.S. 672 (1980).....	3, 6, 86, 100
<i>North American Van Lines</i> , 288 NLRB 38 (1988), <i>rev’d on other grounds</i> , 869 F.2d 596 (D.C. Cir. 1989).....	68
<i>Pacific Southwest Airlines v. NLRB</i> , 587 F.2d 1032 (9th Cir. 1978)	88
<i>R.B. Butler, Inc.</i> , 160 NLRB 1595 (1966)	95
<i>Reade Manufacturing Co.</i> , 100 NLRB 87 (1952)	94
<i>Specialty Healthcare & Rehabilitation Center of Mobile</i> , 357 NLRB 934, 942 (2011)	89
<i>Swift & Co.</i> , 129 NLRB 1391 (1961)	88
<i>Syracuse University</i> , 204 NLRB 641 (1973)	88
<i>The Trustees of Columbia University in the City of New York</i> , 364 NLRB No. 90 (2016)	passim
<i>Vanderbilt University</i> , 10-RC-193205 (2017)	89
OTHER AUTHORITIES	
Dr. Michael G. Dudley, <i>Jumping out of an Airplane: A TA’s Perspective on Teaching Effectiveness</i> , 38 Eastern Education Journal (2009)	14
<i>Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act</i> (May 18, 2016), https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf	87
I.R.S., http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-Self-Employed-or-Employee (last updated Apr. 18, 2017).....	75
<i>New Oxford American Dictionary</i> 1809, 1974 (Angus Stevenson & Christine A. Lindberg eds., 3d ed. 2010)	61

Unionize, American Association of University Professors,
<https://uchicagoaup.wordpress.com/statement/>.....100

PRELIMINARY STATEMENT

The University of Chicago's ("Chicago") student assistants, whom Graduate Students United, Affiliated with The Illinois Federation of Teachers, The American Federation of Teachers and The American Association of University Professors, AFL-CIO (the "Petitioner") seeks to organize, are graduate students seeking advanced academic degrees. Their relationship with Chicago is fundamentally academic and exists entirely within a traditional framework for graduate education. They receive stipends, remission of graduate tuition, and health insurance as part of an integrated funding package designed to attract and retain the most qualified students in a highly competitive academic environment. Chicago offers them teaching and research assistantships to provide a set of educational experiences that strengthen their pursuit of advanced knowledge and degrees and, ultimately, their careers.

At Chicago, graduate assistants teach and conduct research related exclusively to their area of study. These assistantships do not somehow transform the fundamental nature of their relationship with Chicago. They are students, not employees. They have chosen to be at Chicago – and Chicago has admitted them – for the purpose of graduate education, not for employment.

Chicago asserts that the Board's split decision in *The Trustees of Columbia University in the City of New York*, 364 NLRB No. 90 (2016) ("*Columbia*"), was wrongly decided because, in part, the Board ignored the U.S. Supreme Court's cautionary note in *NLRB v. Yeshiva University*, that "principles developed for use in the industrial setting cannot be imposed blindly on the academic world." 444 U.S. 672, 680-81 (1980) (citation omitted); *see also* dissent of Chair Phillip Miscimarra at 364 NLRB No. 90 slip op. at 24; *infra* at pp. 83-87.

Notwithstanding this, *Columbia* does not undermine the undisputed fact that Chicago’s graduate students are students. In *Columbia*, the Board applied its version of a common law test, which the Board wrote “generally requires that the employer have the right to control the employee’s work, and that the work be performed in exchange for compensation.” 364 NLRB No. 90, slip op. at 15. The Board held that student assistants at Columbia had a common-law employment relationship with their university because, *inter alia*, they were “thrust wholesale into many of the core duties of teaching,” *id.* at 16, and “specific [research] work [was] performed as a condition of receiving the financial award.” *Id.* at 17. The Board further noted that the facts in *Columbia* suggested that “the student assistants’ relationship to the University has a salient economic character.” *Id.* at 16.

The record in this case, however, demonstrates that there are determinative differences between the student assistants held to be employees at *Columbia* and PhD graduate students at Chicago. These substantial differences lead to the conclusion that – at Chicago, unlike *Columbia* – the graduate assistant-Chicago relationship is exclusively, dominantly and decisively educational.

Unlike *Columbia*, and as explained *infra* at pp. 14-50, the PhD students at Chicago who teach or perform research do so as a necessary educational component of their academic curriculum, do not teach or perform research under Chicago’s control, and do not receive compensation for services. As such, the “salient economic character” of the relationship that the NLRB found to exist in *Columbia* does **not** exist at Chicago.¹

Graduate assistants at Chicago are students who receive academic training, under the guidance and mentorship of experienced faculty members, as part of their educational programs

¹ In its references to *Columbia*, Chicago is relying on the facts found by the Board majority in the *Columbia* decision.

leading to graduate degrees. The exclusive goal and focus of Chicago's teaching and research requirements is to educate and develop the next generation of faculty scholars and independent scientists. Thus, as Chicago maintains and as Petitioner's witness, Dr. Kenneth Warren, admitted, any benefit derived by faculty who are teaching PhD graduate students to teach or by undergraduates when they learn from a Teaching Assistant ("TA") is simply a consequence of the graduate students' academic teaching requirement:

Q. So when you and the university that you're a part of fulfill this responsibility to teach grad students how to grade, an unavoidable byproduct of that is that you get more time to focus on making that lecture perfect or doing other things in the course, right?

A. Right.

(Warren 1981:12-18.) This is **unlike *Columbia***, where the Board found that (i) "the student assistants' work advances a key business operation of the University: the education of undergraduate students," *Columbia*, 364 NLRB No. 90, slip. op. at 15, and (ii) the research conducted by research assistants was driven by particular grant specifications. *Id.* at 14 ("The research grants specify the nature of the research and the duties of the individuals working on the grants").

By contrast, the record establishes that Chicago's teaching requirements are an essential part of its academic curriculum, are designed to prepare PhD students for careers in academia, and do not require that students serve as hired labor for the economic benefit of the institution. The teaching performed by graduate assistants develops pedagogical skills critical for all PhD candidates. The subject matter taught is aligned with each student's academic interests and/or relates to teaching a fundamental academic skill. Chicago places great emphasis on teaching students to become college and university professors, and has multiple pedagogical programs, including numerous workshops, and other opportunities that PhD students utilize to ensure that

their teaching qualifications and experiences will make them productive and successful future faculty members. Nearly all programs require PhD students to practice teaching classes as part of the educational requirements for a doctoral degree. Because of this philosophy, the teaching requirements at Chicago are far different than those found at *Columbia*, where graduate student assistants were required to teach undergraduate classes that they were “thrust wholesale into” (*i.e.*, with little or no preparation). 364 NLRB No. 90, slip op. at 16.

Because Chicago is first and foremost a research institution, the teaching requirements at Chicago also are comparatively light. The focus is, at all times, on students’ research and development. Thus, the students have, on average, just a few quarters of their seven-year program, during which they are fulfilling teaching requirements while also engaged in other educational activities, including course work, research and writing (particularly their PhD dissertation). Unlike the Board’s “thrust wholesale into” finding in *Columbia*, they are trained, evaluated and mentored both before and throughout the process. (*See infra* at pp. 19-40.)

Further distinguishing *Columbia*, and the Board’s observation that “teaching assistants who do not adequately perform their duties to the University’s satisfaction are subject to corrective counseling or removal,” 364 NLRB No. 90, slip op. at 15, graduate students at Chicago who are fulfilling their teaching requirements are not treated in this manner. If a particular student demonstrates poor teaching skills in the course of teaching, he/she is given additional lessons, coached, and treated as a student learning to teach, as opposed to an employee being subject to “discipline” or removal.

As discussed *infra* at pp. 43-50, student research at Chicago is a fundamental aspect of doctoral education, the exclusive cornerstone of which is the creation of new knowledge in one’s field of study. Doctoral students choose their own research and dissertation topics, often very

early in their academic program. In the physical and biological sciences, doctoral students elect to affiliate with the laboratory of a faculty member who is researching a topic closely aligned with the students' own PhD dissertation topic. PhD students are called Research Assistants ("RAs") in that laboratory, where they learn to perform research integral to their individual dissertation topics. They are not scheduled to be in the lab at designated hours; nor does Chicago regulate their research hours. Students are free to pursue their research at the times and on the occasions that suit them and their research interests. Their funding does not vary based upon hours spent in the lab.

Unlike the graduate research assistants in *Columbia* who were found **not** to be "permitted to simply pursue their educational goals at their own discretion, subject only to the general requirement that they make academic progress," 364 NLRB No. 90, slip op. at 18, Chicago's PhD students do exactly that. They choose to engage in research that is, at a minimum, intertwined with their doctoral studies, and the research that they learn and elect to conduct furthers their individual PhD dissertations. All their effort in the laboratory is inseparable from academic requirements necessary to complete their dissertation. In fact, **unlike *Columbia***, there was no testimony whatsoever that **any** Chicago PhD graduate student did any research on anything other than research for his/her dissertation.

Neither can the funding package received by graduate assistants at Chicago fairly be characterized as compensation for services. (*See infra* at pp. 50-52.) Rather, it is financial aid that is designed to support the students and flows from their status as students in the program. This is plainly apparent because the package provided to all students in a given Ph.D. program is distributed without regard to: (i) the number of hours the students actually spend fulfilling the requirements of their appointment, which can vary dramatically between Divisions and/or

Departments and Programs; (ii) the value of the effort provided or the cost to replace that effort (such as with an adjunct instructor); or (iii) the quality of the student's performance. This is **unlike *Columbia***, where “[r]eceipt of a full financial award is conditioned upon their performance of teaching duties.” 364 NLRB No. 90, slip op. at 15. Thus, graduate assistants at Chicago have all of the attributes of students in a regular academic setting, and receive none of the benefits provided to Chicago's actual employees.

These critical factual distinctions, and numerous others developed at the hearing and reflected in the record, as discussed below, mandate a different outcome from *Columbia*. The undisputed facts developed at the hearing *in this case* unequivocally establish that Chicago's graduate students are students **only**, not employees.

Petitioner myopically ignores the U.S. Supreme Court's admonition that “principles developed for use in the industrial setting cannot be ‘imposed blindly on the academic world,’” *NLRB v. Yeshiva University*, 444 U.S. 672, 680-81 (1980) (citation omitted), by suggesting that research assistants are merely a “labor pool” used to generate income for Chicago. This myopic focus is illustrated by Petitioner's reliance on the relationship of PhD students' research and a faculty member's co-authorship on articles relating to their students' research, and the inclusion of these publications in grant applications. This, however, is the process by which academics in certain sciences publish articles announcing their findings and use grants to create new knowledge. By ignoring this, Petitioner is “blind” to the academic reality that faculty apply for grants for the benefit of the PhD graduate students, so that – for free – students can learn to teach and conduct their own research. As is plain from the testimony, Chicago offers these assistantships for the sole benefit of the education and experiences of its doctoral students rather than for economic gain. Chicago's “business” is to educate the next generation of academics and

world-class scientists at no cost to the students. Any third-party benefit derived from Chicago's relationship with its PhD graduate students is incidental. (*See infra* at pp. 41-42.)

Because the testimonial evidence overwhelmingly and directly contravenes its myopic focus, Petitioner inappropriately “thrust wholesale” a pile of 71 random documents into evidence at the close of its case and did so without a single witness. The admission of the documents by the Hearing Officer over Chicago's strong objection was contrary to the National Labor Relations Board Casehandling Manual, which requires documents to be introduced into evidence only after being “handed to the witness” to be “identified, authenticated, and *connected*.”² As Chicago pointed out in its objection, Petitioner did not elicit any witness testimony regarding these documents and completely failed to explain their relevance, *i.e.*, their “connection.” As such, these documents should not be given any weight.³

Chicago's graduate assistants are not employees, even under the erroneous *Columbia* test. But, in the event that the Regional Director finds Chicago's graduate assistants to be “employees,” the overall unit sought by Petitioner is inappropriate because it seeks to combine PhD students teaching and conducting research *to fulfill their academic degree requirements* with a hodgepodge of other unrelated classifications – Master's students, Workshop Coordinators, Non-Lab Research Assistants (“Non-Lab RAs”), and PhD students teaching in excess of their teaching requirements. As discussed in detail below, these groups of students lack a community of interest with PhD students who teach and conduct research to fulfill an

² NLRB Casehandling Manual (Part Two), Representation Proceedings, Sec. 11224.1 (January 2017) (emphasis added).

³ Notwithstanding this overarching justification for not giving any weight to any of these documents on relevance grounds, Chicago has demonstrated their actual irrelevance in several instances, as discussed *infra* at pp. 50 (n.19), 66 (n.23), 72 (n.25), and 77 (n.29).

academic requirement and not for additional funding. A single unit encompassing all these students would, therefore, be inappropriate. (*See infra* at pp. 88-93.)

Also, if an election were directed – which should not occur based on this record – the Regional Director should adopt the NLRB’s standard voter eligibility formula for representation elections, namely all employees in the petitioned-for classifications who are on the employer’s payroll and working as of the close of the pay period immediately preceding the issuance of a decision and direction of election. *See, e.g., Greenspan Engraving Corp.*, 137 NLRB 1308 (1962). Petitioner’s request for a look-back period under which any student who was in a petitioned-for classification during the Spring 2017, Winter 2017, Autumn 2016 or Summer 2016 quarters would be eligible to vote has no basis in law or logic. Petitioner bears the heavy burden to prove that graduate students who were in petitioned-for classifications during the Winter 2017, Autumn 2016 and Summer 2016 quarters, but not during the Spring 2017 quarter, are likely to be appointed into these same positions again in the future. Not only did Petitioner fail to carry its burden, but Chicago presented evidence showing that, due to the highly decentralized nature of its graduate programs and their varied teaching and research requirements across the Schools, Divisions and Departments, it cannot be stated with any degree of certainty that graduate assistants who held an appointment in the past are likely to hold another one in the future. Moreover, of the twelve universities that have been subject to graduate student representation petitions after *Columbia*, nine have used the standard voter eligibility formula, including the election conducted by this Region at Loyola University of Chicago. (*See infra* at pp. 94-97.)

Finally, it is worth pointing out that there is one issue on which Petitioner and Chicago agree, although agreement did not come easily. Initially, Petitioner requested a mail ballot

election to be conducted between May 30 and June 20. In response, Chicago argued, three days before the hearing closed, that a mail ballot election is inappropriate, and that a manual ballot election is the only appropriate voting method – if an election were directed at all – because none of the factors that the Board typically relies on to support a mail ballot election is present in this case. (Tr. 1602-1611.) After hearing Chicago’s arguments, but just prior to the close of the hearing, Petitioner changed its position and stated that it “is no longer requesting a mail ballot election” and that it is “in agreement with the university that it’s not feasible to hold a manual election during the summer and that it should not be held until after the fall quarter starts.” (Tr. 2087:18-23.) The election – if one is erroneously directed – will therefore be conducted by manual ballot after the start of the Autumn 2017 quarter, provided that the immediately preceding payroll date will capture all eligible students as of the Autumn 2017 quarter.

PROCEDURAL HISTORY

On May 8, 2017, Petitioner filed a Petition seeking to represent “all graduate students” from Chicago’s School of Divinity, the Division of Social Sciences, the Division of Humanities, the School of Social Service Administration, the Physical Sciences Division and the Biological Sciences Division, who have held a covered position in the past academic year.⁴ (Bd. Ex. 1.) (According to Petitioner, “[a]ll graduate students” includes both Master’s students and PhD graduate students. (Tr. 14:12-18.) The Petition’s covered positions include: TAs, RAs, Course Assistants, Workshop Coordinators, Writing Interns, Preceptors, Language Assistants, Instructors, Lecturers, Lectors and Teaching Interns. (Bd. Ex. 1.)

On May 16, 2017, Chicago filed a Statement of Position, wherein Chicago raised the following issues for resolution by the Regional Director: (1) the employee status of graduate students pursuant to Section 2(3) of the NLRA; (2) the inappropriate inclusion of Master’s students, Non-Lab Research Assistants, Workshop Coordinators, and students teaching in excess of their academic teaching requirements in the proposed bargaining unit; (3) Petitioner’s proposed eligibility formula; (4) the fact that *Columbia* was wrongly decided; (5) that Teamsters Local 743 has an interest in this case; and (6) that a manual ballot in the Autumn 2017 quarter is the appropriate election procedure. (Bd. Ex. 3.) By including these arguments in its Statement of Position, each of these issues was preserved for all purposes.

On May 18, 2017, the record was opened and Chicago submitted two Offers of Proof, seeking a hearing on several issues, including employee status and the appropriateness of the proposed bargaining unit. (Er. Exs. 1-2.) On May 18, 2017, the Regional Director for Region 13 of the NLRB granted Chicago a hearing on all issues contained in its Offers of Proof.

⁴ The Petition also sought inclusion of the Oriental Institute. However, during the hearing, Petitioner stipulated to its removal from the Petition. (Tr. 816:10-818:16.)

Thereafter, a hearing was conducted from May 18, 2017 to June 1, 2017, during which time there was testimony from 25 witnesses: 9 from Chicago and 16 from Petitioner.

STATEMENT OF FACTS

A. Chicago And Its Uniquely Decentralized Graduate Education Program

Chicago is a private research institution located in Chicago, Illinois, comprised of five divisions (the “Divisions”) and seven professional and continuing education schools (the “Schools”). (Er. Ex. 3.) The five Divisions are: (1) the Division of Humanities (“Humanities”); (2) the Division of Social Sciences (“SSD”); (3) the Physical Sciences Division (“PSD”); (4) the Biological Sciences Division (“BSD”); and (5) the Institute of Molecular Engineering. (Er. Ex. 3.) The Schools are: (1) the Chicago Booth School of Business; (2) the Divinity School; (3) the Graham School of Continuing and Professional Studies; (4) the Harris School of Public Policy; (5) the Pritzker School of Medicine; (6) the Law School; and (7) the School of Social Service Administration (“SSA”). (*Id.*) Chicago also has an undergraduate program called the College. (*Id.*; *see also* Niestat 55:11-13.)⁵

More than 60 PhD and nearly 30 Master’s programs are offered at Chicago. (Er. Ex. 4.) While all graduate education takes place in the Divisions and Schools, most faculty members hold appointments in both the Divisions/Schools and the College. (Wild 289:11-18; Nirenberg 115:6-12.) A faculty member’s primary appointment, however, is in his/her Division/School. (Wild 289:11-15.)

i. Unlike *Columbia*, Chicago has no Graduate School – but it does have common educational and research goals for its PhD students.

Unlike most of its higher education counterparts, Chicago does not have a graduate school of arts and sciences responsible for overseeing graduate education. (Niestat 55:14-20.) In contrast, Chicago is highly decentralized. (Niestat 55:23-56:6; Wild 402:9-11.) Decisions

⁵ Testimony referenced herein is to the page(s) and line(s) of the transcript for the representation hearing held between May 18, 2017 and June 1, 2017, preceded by the name of the witness whose testimony is being cited.

regarding graduate education are made by the individual Divisions/Schools where the graduate program is housed. (Niestat 55:23-56:3.)

Despite being decentralized with a multitude of differences in the delivery of graduate education both between and within individual Divisions/Schools, Chicago has certain institutionalized common research and educational goals. First, Chicago is primarily a research institution; and all programs share this dedication to research. (Nirenberg 126:23-127:3; Amit 1286:7-13; Hirschfeldt 1344:9-10.) Indeed, “Chicago was founded on the model of the German research university of the 19th century, which is focused primarily on graduate education” (Wild 289:3-6.) It was not until many years later, in the 20th century, that the undergraduate “[C]ollege was added according to the model of Oxford and Cambridge, that was, so to say, lodged in the research university, focused on graduate education.” (Wild 289:5-10.) At the same time, Chicago considers itself a “teacher of teachers,” and uniformly makes learning to teach a central component of all PhD education. (Nirenberg 127:3-4; Wild 434:11-15; Robertson 489:10-490:1; Prince 601:13-21; Owens 992:22-993:13; Hopkins 821:17-822:11; Morse 1818:23-1819:13; Hirschfeldt 1340:15-19.)

ii. Because Chicago is extremely decentralized, the experiences of its PhD students vary greatly.

As discussed in detail below, Chicago’s decentralized nature results in a significant variance in PhD education. Indeed, PhD students have different degree requirements by Division/School, and frequently even by Department or Program within a Division/School. (Er. Ex. 15A.) This differentiation results in PhD students in one program of Chicago having experiences that differ from PhD students in other programs. Decentralization makes it nearly impossible to find commonality based solely on the research and teaching experiences of graduate students in one Division/School or Department/Program within a Division/School. (*Id.*)

B. Unlike The Finding In *Columbia*, The Relationship Between Chicago And Its Graduate Students Is Exclusively Educational.

Chicago's PhD graduate students receive an education that prepares them for their future careers in academia, industry, non-profits and government. To enable them to fulfill these post-education roles, Chicago has an educational model: to provide experiences in which PhD students will learn how to teach and to conduct research and have opportunities to practice doing both. (Nirenberg 135:3-12, 136:16-137:4; Robertson 489:23-490:1; Hopkins 822:1-4, 871:18-872:16; Amit 1286:3-6.) Thus, experiential learning as a TA or researcher is an academic degree requirement at Chicago. (Er. Ex. 15A; Nirenberg 136:16-137:4; Wild 321:11-15; Robertson 493:18-20; Hopkins 823:4-5, 871:18-20; Owens 1024:11-14; Prince 602:19-21, 638:2-6.)

Indeed, studies have shown that teaching experience for PhD students is viewed as a vital and beneficial aspect of PhD education. (See, e.g., Dr. Michael G. Dudley, *Jumping out of an Airplane: A TA's Perspective on Teaching Effectiveness*, 38 Eastern Education Journal 1, 7 (2009) (discussing the benefits to graduate students - not any consequential benefit to undergraduate students or professors – and explaining that “it behooves graduate students who are interested in pursuing teaching careers to seek out and receive as much teaching experience as possible before going on the market . . . such experience serve to introduce future faculty members to the demands and expectations of working in an academic culture . . . both good and bad experiences serve a useful function in preparing individuals for their future careers”).)

i. PhD Graduate Students learn to teach exclusively for their own education and future.

At Chicago, learning to teach and to evaluate student work is fundamental to the education of PhD students and their preparation for careers in teaching and scholarship. (Er. Exs. 16, 24; Nirenberg 134:23-135:9, 136:19-137:4; Robertson 489:21-490:1; Wild 294:5-295:5;

Owens 993:5-13.) Teaching skills are stressed not only for future faculty, but also because these skills will enable students to convey complex theories to a wide audience and to thrive in any work environment, including careers in industry, non-profits, and government. (Owens 993:5-13 (“regardless of how they use that degree, the ability to communicate with other people who are not within their specialty is still a valuable experience . . .”).) Because learning to teach is central, teaching experiences are an academic degree requirement. (Er. Ex. 15A; Nirenberg 136:16-137:4; Wild 321:11-15; Robertson 493:18-20; Hopkins 823:4-5; Owens 1024:11-14; Prince 602:19-21.)⁶ A student who does not TA – as required – cannot graduate.⁷ (Robertson 490:17-21; Ford 1451:2-6; Lagos 1711:6-11; Er. Ex. 28 at 1.)

1. Departmental requirements for teaching graduate students to teach

Due to Chicago’s highly decentralized nature, each Division/School has varying degree requirements for teaching experiences. (Er. Ex. 15A.) Indeed, even within a Division/School, various Departments or Programs have different requirements. (*Id.*)

For Divisions/Schools that participate in the Graduate Aid Initiative (“GAI”), discussed *infra* at pp. 50-51, students must obtain a minimum of five “teaching points.” (Er. Ex. 15A.) Each teaching opportunity is assigned a certain number of points, based upon its complexity and contribution to the PhD graduate students’ learning experience. (Nirenberg 135:22-136:4; Robertson 490:2-10, 501:22-502:2; Wild 331:15-18; Owens 1004:10-24.) A student acting as a TA, Preceptor, Core Intern, or Writing Intern receives one teaching point. (Nirenberg 135:22-

⁶ While there is no overall PSD Divisional teaching requirement, most Departments within PSD have teaching requirements. (Swanson 1075:11-17.) Only Geophysical Sciences, Computer Science, and Physics do not require teaching as an academic requirement; and, as Computational and Applied Mathematics is a new program, it is still developing its teaching requirement. (Er. Ex. 15A.)

⁷ The Divinity School has accounted for the lack of teaching opportunities in religious studies by allowing students to graduate without meeting its teaching requirement. (Vanderpoel 1524:12-18.) Other accommodations include choosing to teach outside Chicago or choosing to teach in the Humanities Division, SSD or the Writing Program, and preferably choosing religion-related courses, if possible. (Owens 1003:15-1004:7, 1005:6-23.)

136:4; Robertson 490:2-10; Wild 331:22-332:4; Owens 1004:8-13.) A student who fulfills a role as a Language Assistant receives one-half a point. (Wild 332:1-2; Lagos 1704:2-4.) When a student is acting as a graduate student Lecturer, he/she receives two teaching points. (Nirenberg 135:22-136:4; Robertson 490:7-10; Wild 331:19-21; Owens 1004:10-13.)

While the minimum teaching points required under the GAI is five, some Humanities Departments – based upon the faculty’s judgment as to the need for additional experience – require additional teaching points. (Er. Ex. 15A.) In these unusual circumstances, the increased point requirement reflects the view of the Department/Program that to be an effective teacher in that subject, additional teaching experience is necessary. (Wild 321:20-322:4; Robertson 494:25-495:5.) For example, students in Germanic Studies must obtain twelve teaching points. (Wild 322:10.) Because teaching a language is very difficult, that Department believes that for its students to be competitive in the marketplace, they must be able to demonstrate that they have taught all three levels of German: elementary, intermediate, and advanced. (Wild 321:20-322:4, 322:21-23.)

Significantly, the increased teaching requirements are also accompanied by a structured program aimed at increasing pedagogical skills. (Wild 311:12-16, 312:22-313:7.) For example, in Germanic Studies, students will begin by teaching in Elementary German and gradually work their way up to Advanced German, where they will be permitted to design and teach their own course. (Wild 313:3-7, 313:21-314:2.)

Not only does the number of teaching points required vary within the GAI Divisions/Schools, but so does the time during which the students are expected to complete their teaching requirements. For example, in Humanities, some Departments require that students complete their teaching points during years three through five of the PhD program. (*See, e.g.,*

Er. Ex. 15A at Cinema and Media Studies and Philosophy.) Differently, other Departments require that students complete their teaching during years three and five (*id.* at Art History), years three through four (*id.* at Classics), and years two, three and five (*id.* at Romance Languages and Literatures).

PhD graduate students in the School of Social Service Administration are required to TA for three courses during years three through five of the PhD program. (Er. Ex. 15A.)

BSD takes a different approach to pedagogical experience. BSD requires each student to obtain two quarters of teaching experience. (Er. Exs. 15A, 28.) BSD doctoral students desiring classroom experience may obtain classroom teaching experience only by acting as a TA because BSD PhD students cannot be graduate student Lecturers. (Prince 601:18-21, 734:9-11.) For students who are interested in pedagogical experience outside of the classroom, BSD provides alternatives to teaching assistantships. (Prince 603:24-604:3; Er. Ex. 15A, n.1.) Specifically, rather than be a TA, BSD PhD students may obtain one of their two pedagogical requirements by taking BSD's TA Training Course. (Er. Ex. 28.) The TA Training Course is a one-quarter course that teaches practical skills for teaching. (Prince 604:7-19.) During the course, students have the opportunity to practice teaching in front of their peers and receive feedback from faculty and other classmates. (*Id.*) Throughout the course, students are also taught a variety of approaches to teaching. (*Id.*)

BSD students may also fulfill their teaching requirements through a number of alternative activities, hereafter deemed "teaching equivalents." (Er. Ex. 15A, n.1; Er. Ex 28.) For example, BSD students may seek out teaching assistantships at local high schools if they are interested. (Prince 605:9-20.) Students may also help run a one-week boot camp for incoming graduate students on two occasions in lieu of being a TA for one quarter. (Prince 605:21-606:2.)

Notably, none of the BSD teaching alternatives involve undergraduate education, completely undermining any claim that PhD students are a “labor pool” for undergraduate instruction.

While BSD has a two-quarter Division-wide teaching requirement, which may not be completed in the first year, the time when students are expected to fulfill the requirement differs from program to program. (Er. Ex. 15A; Prince 626:21-627:1.) For example, Medical Physics requires that teaching commence after the second year of the program, while Human Genetics requires that teaching take place in years two and three of the program. (Er. Ex. 15A.) There are two reasons for this: first, BSD wants students to gain experience in graduate courses prior to taking on teaching roles; and, second, many programs believe it is more important to focus on research early in PhD education, rather than teaching. (Prince 627:3-14.)

In PSD, there is no Divisional teaching requirement. (Er. Ex. 15A; Swanson 1075:11-14.) Instead, most Programs within PSD have created their own teaching requirements and timeline for completion of those requirements. (Er. Ex. 15A.) Certain programs, such as Astronomy and Astrophysics, permit PhD students to substitute teaching equivalents, such as outreach activities at the Adler Planetarium, in lieu of classroom teaching experience. (*Id.* at n.4; Swanson 1077:23-1078:10.) Again, as with BSD’s pedagogical requirements, PSD’s teaching equivalents have nothing to do with teaching undergraduate education, especially where the teaching equivalents can be satisfied at other institutions. Thus, Chicago’s use of these teaching equivalents dispels the notion that Chicago has a compensation system under which Chicago PhD students serve as a “labor pool” for the undergraduate program like the compensation system described by the Board in *Columbia*.

One consistent factor in teaching requirements throughout Chicago is highly significant: PhD students are required to complete their teaching requirements within their program of study

or a related field. (Robertson 508:2-6; Wild 325:20-326:4; Nirenberg 156:4-7; Er. Ex. 28.)⁸ For GAI-covered academic units, such as Humanities, SSD and Divinity, the general exception to this rule is voluntary participation in the Writing Program, as writing pedagogy is an interdisciplinary skill – transferable across fields of study – that all PhD students benefit from learning. (Wild 347:9-20, 351:22-352:15; Nirenberg 215:7-9; Owens 1037:22-1038:1.) Putting the voluntary Writing Program aside, however, not a single Petitioner witness testified that he/she met his/her teaching requirement by being forced to teach outside of his/her area of study.

Notably – and contrary to *Columbia’s* description of PhD students being used as a “labor pool” to cover undergraduate core subjects – Chicago also goes out of its way to create opportunities for PhD students to teach. The general rule is that for a course to have a TA, there must be at least 24 undergraduate students enrolled in the course. (Wild 318:18-24.) However, to create opportunities for PhD students to gain teaching experience in their field of study where there would otherwise be none, Chicago frequently waives this rule and permits students to TA certain courses with a lower enrollment. (Wild 318:25-319:15; Nirenberg 168:18-169:17; Owens 1002:7-1003:8.)

2. *The extensive teaching experiences available to PhD graduate students ensure that PhD graduate students are not “thrust wholesale into” teaching opportunities, including in Chicago’s Core Curriculum.*

The decentralized nature of Chicago’s graduate education enables the Divisions/Schools, and their individual programs of study, to fine-tune the required teaching experiences and the students’ prerequisites to those experiences. In the Humanities Division and SSD, PhD students can fulfill their teaching requirement by being TAs, Course Assistants (a synonym for TAs),

⁸ The Divinity School does not strictly require teaching within a PhD student’s chosen field. While the School prefers that students obtain teaching experience in religious studies, due to minimal teaching opportunities available in that discipline, the School allows students to choose teaching experiences in the Humanities Division or SSD so that they can obtain the needed pedagogical experience. (Owens 1001:25-1002:5, 1003:15-1004:7, 1005:6-23.)

graduate student Lecturers, Language Assistants, Writing Interns, Preceptors, and Core Interns. (Er. Exs. 16-17, 24; Wild 326:7-11.) In PSD, PhD students can fulfill their teaching requirements by being a TA and/or a graduate student Lecturer or other outreach activities as permitted by specific programs. (Swanson 1078:23-1079:4; Er. Ex. 15A, n.4.) In BSD, students fulfill their two-quarter TA requirements in three different ways: (i) taking a pedagogy course; (ii) being a TA; or (iii) participating in an approved “teaching equivalent.” (Prince 601:13-21, 734:9-11; Er. Ex. 15A.) In the Divinity School, PhD students can fulfill their teaching requirement by having teaching experiences as TAs, graduate student Lecturers, Writing Interns, and Core Interns. (Owens 994:18-23, 1004:5-7, 1037:22-1038:1.)

Some of these teaching experience opportunities that fulfill the teaching requirement are available in Chicago’s Core Curriculum (the “Core”). The Core is “a set of courses or set of sequences of courses that provide general knowledge and [modes] of inquiry for all of the subjects of the biological sciences, the social sciences, physical sciences and of course the humanities.” (Robertson 530:9-13.)

The Core at Chicago differs materially from the NLRB majority’s impression of the Core in *Columbia*. Unlike any situation in which students are “thrust wholesale into” teaching Core subjects, Chicago PhD students cannot be instructors in the Core until they have either served as a Core Intern or Writing Intern at least once. (Wild 301:9-16, 334:20-25; Nirenberg 138:25-139:12; Hilal 1874:18-24; Er. Ex. 17.) Thus, to prevent a “thrust wholesale into” situation, they must be very familiar with the Core prior to having responsibility over an entire course.

For the same reason, PhD graduate students in the Core receive “rigorous” mentoring. (Robertson 531:1-5.) First, there is an orientation workshop for all teachers in the Core aimed at ensuring that graduate students “are as successful in teaching in the [C]ore” as possible. (Wild

345:25-346:15.) Second, all Core faculty and graduate student teachers meet on a weekly basis to discuss the upcoming week's course topics, techniques for teaching those topics, and teaching methods that have worked and others that have not. (Wild 341:24-342:4; Nirenberg 149:2-3; Robertson 531:5-11, 531:18-532:1; Hilal 1847:3-1848:1.) Third, all graduate student Lecturers in the Core are formally observed lecturing at least once during the quarter. (Wild 344:15-345:4.)

Unlike the Board found in *Columbia*, no witness in this case testified that they were forced to prepare exams or plan a lecture in the Core without any guidance. *Columbia*, 364 NLRB No. 90 slip op. at 16. Instead, witnesses testified that the curriculum in the Core is largely pre-determined. (Nirenberg 191:2-10; Hilal 1847:3-1848:1, 1851:18-24; Wild 334:12-17; Robertson 576:11-15; Er. Ex. 17.) Chicago's graduate assistants are simply not "thrust wholesale into" the Core.

In their required teaching experiences both inside and outside the Core, TAs learn how to teach by observing a faculty member lecture. (Wild 296:19-297:5, 297:17-22; Robertson 499:6-14; Owens 995:8-14.) In addition, TAs may participate in all aspects of the course, including learning how to create a syllabus, craft assignments and exams, grade papers, lead discussion groups, hold office hours, and giving one or two lectures during a quarter. (Robertson 497:9-19; Wild 298:2-299:1; Owens 995:8-14.)

A graduate student Lecturer is a PhD student who teaches his or her own standalone course from beginning to end and everything in between. (Robertson 498:1-4; Wild 326:13-19; Nirenberg 278:11-14; Owens 997:6-10.) This is often seen as the final step in a progression of the pedagogical education process, where a PhD student applies the skills gained through previous teaching assistantships to his or her own course. (Wild 326:22-327:1.) Gaining

experience as a graduate student Lecturer also enhances a student's resume when applying for academic jobs following graduation. (Owens 998:9-13.)

A Language Assistant learns how to teach for their academic requirement by meeting with undergraduate students one-on-one to practice conversing in various foreign languages. (Wild 327:13-19, 329:20-24; Lagos 1688:9-14.)

A Preceptor is a PhD student who meets his/her academic teaching requirement by assisting undergraduate students in the drafting of their B.A. theses. (Wild 328:14-17; Robertson 498:5-9.) In some instances, Preceptors are also appointed to assist Master's students completing their theses. (Robertson 498:22-499:1.)

A Writing Intern is a PhD student who tutors undergraduate students in the Core to improve their writing skills. (Er. Ex. 58; Wild 330:13-331:1.)

PhD students can also seek out opportunities as a TA in the Core (sometimes called Core Interns) or a Lecturer in the Core. (Robertson 516:12-517:7; Wild 326:5-11; Er. Ex. 17.) To obtain any teaching experience in the Core, PhD graduate students must apply for the opportunity; they are not assigned to teach in the Core. (Nirenberg 198:7-14.) To apply for a lectureship in the Core, all PhD students must first undergo a ten-week Writing Intern program, and often must first be a Writing Intern or Core Intern at least once. (Wild 301:9-16, 334:20-25; Nirenberg 138:25-139:12; Hilal 1874:18-24; Er. Ex. 17.) After applying, graduate students are selected for a course "according to their field, to their specialization." (Robertson 530:23-25.) Not a single Petitioner witness testified that after applying for a teaching opportunity in the Core, he/she was required to teach outside of his or her field of study.

3. *Matching PhD students to TA assignments and placing students in courses where they want to teach, ensures that students are not, like in Columbia, “thrust wholesale into” teaching opportunities.*

The process by which students are matched with various teaching opportunities varies widely by Division/School and even within Divisions/Schools. Notwithstanding these variations in process, the result is uniform: Chicago matches the student with the teaching opportunity that best supports his or her academic development. (Nirenberg 167:20-22; Robertson 508:2-6, 534:22-24; Wild 309:6-18.)

In the Humanities Division, each Department is responsible for matching its students to teaching positions. (Wild 308:22-309:4.) The Departments use different methods to match students with opportunities, but in each Department, faculty members are involved in the process. (Robertson 533:13-534:14; Wild 309:6-11.) For example, each Spring, the Music Department sends out a notice to PhD students asking them to express their teaching preferences for the coming year. (Robertson 533:14-20.) Once the responses are received, a Music Department administrator will put together a grid that contains: all PhD students; the teaching opportunities available; the preferences of the student; the teaching points the student still needs; and the teaching history of the student. (Robertson 533:21-534:10.) From there, the faculty considers the preferences of the student and decides which course the student should be matched with. (Robertson 534:6-14, 536:3-5.)

In Germanic Studies, the matching process is managed by the Director of Language Programs. (Wild 315:22-316:5.) Each year, the Director and the faculty assemble to discuss the students' pedagogical progression and where each student should teach the following year. (Wild 314:13-18, 315:22-316:5.) In matching students to courses, the faculty also consider

students' dissertation progress to ensure that teaching does not slow down the completion of a student's dissertation. (Wild 314:19-315:6.)

In SSD, students are matched to courses generally by expressing their interest in a teaching opportunity to their Department. (*See, e.g.*, Lagos 1719:14-19.)

In BSD, the practice of pairing is varied. Often students reach out to members of the faculty to ask if they can be a TA in their course. (Prince 630:12-14.) Sometimes, the faculty members reach out to students to ask them to be a TA. (Prince 630:15-16.) The Division also posts teaching opportunities on its website. (Prince 630:23-25.) Significantly, PhD students have the right to say "no" to a faculty member's overture; and it is not uncommon for a doctoral student to do so. (Prince 631:2-5.) Ultimately, it is the PhD student's choice whether or not to accept a particular teaching assistantship. (Prince 631:6-9.)

In PSD, the various programs of study match students with teaching opportunities in different ways, focusing on the interests of the student in making a match. (*See, e.g.*, Hopkins 829:23-830:24 (discussing the assignment to Organic Chemistry, Inorganic Chemistry, Physical Chemistry, Chemical Biology and Materials of Chemistry based upon the student's interests).)

In the Divinity School, the Dean of Students sends out an announcement about teaching opportunities to PhD students and asks students to submit a cover letter and CV if they are interested in the opportunity. (Owens 1013:10-24.) The School requires a CV and cover letter because it believes that students must practice drafting cover letters and maintaining an up-to-date CV as professional development. (Owens 1013:25-1014:10.)

4. *The mentoring of future faculty is a Chicago faculty goal for students who seek a future in academia.*

In general, mentoring of graduate students is a "high priority" for Chicago. (Warren 1961:7-10.) Dr. Kenneth Warren, a Petitioner witness and the Vice President of the Chicago

Chapter of the American Association of University Professors (“AAUP”), best described the scope of the mentorship relationship as follows:

Q. Why do you spend so much time mentoring PhD students?

A. Well, the important thing to remember about this profession is that mentoring is built in all levels . . . It’s very important to help individuals coming into the profession at all levels, whether as PhD students or as junior faculty members, to learn the expectations that we have within the profession to give them feedback and guidance along the way. So there’s a continuum of mentoring that involves PhD students . . . So mentoring is just across-the-board in what we do in the academy. I can’t sort of see any version of the academy in which mentoring doesn’t occur at all levels. So, yes, we mentor our graduate students because the process of becoming an effective professional in the fields in which we work require mentoring up and down the ladder.

Q. You were mentored at Stanford, right, when you were getting your PhD?

A. Yes.

Q. This is, as you say, part of the profession?

A. Yes.

Q. Not only in the English department but across the University of Chicago?

A. Right.

(Warren 1962:14-1964:17.)⁹

Because of this “high priority,” Chicago goes to great lengths to ensure that its students are mentored while teaching for their academic requirements. Although the methods of mentoring vary by faculty member, witnesses in this case provided a broad picture of the mentoring students receive. For example:

⁹ Dr. Warren, along with two other Petitioner witnesses (Anton Ford and Denis Hirschfeldt), publicly supported the Petitioner and its organizing efforts, while simultaneously serving Chicago as statutory supervisors. For reasons more fully explained at pages 98-100, *infra*, Chicago has requested that the Regional Director investigate whether the petition is tainted by the involvement of these three supervisors in the Petitioner’s organizing efforts.

- Victoria Prince, Dean of Graduate Affairs for BSD, spends a great deal of time mentoring her TAs. She explains to them why she lectures in the manner she does and discusses with her TAs the different methods of teaching that they can use in different situations, such as asking the class to discuss a question with a neighbor and then reporting on their discussion to the entire class. (Prince 609:21-610:20.) She also discusses with her TAs the difficulties they may encounter when teaching and how to overcome those difficulties. (Prince 610:21-611:20.) These include methods to discourage unwanted behavior in the classroom. (*Id.*) She asks that her TAs practice addressing these difficulties during the discussion groups that they hold. (*Id.*) Dr. Prince trains TAs to lead small discussion groups by discussing with the TAs precisely what areas she would like them to address in a discussion section. (Prince 616:3-5.) At the beginning of the course, she sits in on the discussion sections to observe how her TAs are handling the discussion and provides feedback on how to improve. (Prince 616:6-10.) She teaches her students to grade by first asking her TAs to come up with appropriate questions for an exam or midterm. (Prince 612:7-14.) She then discusses with them why certain questions are inappropriate. (Prince 612:7-14.) She will also sit with her TAs while they grade and spot check their grading. (Prince 613:1-10.) Dr. Prince teaches the students to guest lecture by listening to the TA do a practice run of the lecture. (Prince 622:10-16.) She will review the slides the student wants to use at the lecture and make sure they are not too lengthy and that the content is clear and accurate. (*Id.*) She will then sit in on the lecture and provide subsequent feedback on their performance. (Prince 622:18-24.)

- Christopher Wild, Master of the Humanities Collegiate Division, works with his TAs before they guest lecture to put together materials that will assist them in teaching the course. (Wild 305:4-7.) He then discusses the readings with the PhD graduate student and how to put together a lesson plan. (Wild 305:7-9.) Once the TA puts together a lesson plan, Dr. Wild looks the plan over and provides “constructive criticism.” (Wild 305:9-12.) After the TA guest lectures, he sits down with him/her and provides feedback on what he/she did well and where he/she can improve. (Wild 307:1-6.)
- Anne Robertson, Dean of the Humanities Division, meets with her TAs weekly to discuss the readings for the week and what she hopes the students will get out of the readings. (Robertson 514:24-516:7.) As papers and exams come up, she asks her TAs to provide questions and paper topics that she will review and critique. (*Id.*) Dr. Robertson also sits down with her TAs and discusses how to grade papers and what to look for when grading papers. (*Id.*) She further discusses the etiquette of holding office hours and how to advise students during office hours. (*Id.*) She allows each TA to give one standalone guest lecture during the quarter. (Robertson 517:23-25.) Prior to the guest lecture, Dr. Robertson prepares the student extensively and often has the student conduct a dry run of the lecture. (Robertson 517:25-518:2.) During the guest lecture, Dr. Robertson takes notes and subsequently provides feedback to her TA. (Robertson 518:2-14.) Dr. Robertson also retains these notes for some point in the future when she may need to draft a detailed recommendation letter for the student. (*Id.*)

- David Nirenberg, Dean of the Social Sciences Division, meets with his TAs before or after each lecture – and also more formally each week – to discuss what is happening in the course and what needs to be done. (Nirenberg 148:11-149:3.) He aims to teach his TAs what difficulties arise when teaching and how to overcome those difficulties. (Nirenberg 141:25-142:4.) He teaches the TAs about his lecture style and how he chooses the topics he lectures on. (Nirenberg 147:5-10.) He teaches his TAs the art of “fram[ing] a question,” so that it is not too narrow and not too broad. (Nirenberg 142:8-25.) He also teaches his TAs how to diagnose issues in student writing and the symbols they can use to identify common writing problems, such as transition problems and informal logic of the argument. (Nirenberg 143:18-144:3.) He teaches his students how to lecture by allowing them to guest lecture. (Nirenberg 144:4-20.) The day before the lecture, he works with his TA to prepare; and the day after the lecture, he meets with the TA for hours to discuss what was good and what needed improvement. (Nirenberg 144:12-20.)
- Michael Hopkins, Deputy Dean of the Physical Sciences Division, meets with his TAs at the outset of the quarter to outline the aims of the course. (Hopkins 854:18-20.) Dr. Hopkins believes that one cannot be an effective teacher unless he/she has a clear objective for the course and the course material is aligned with those objectives. (Hopkins 854:20-25.) He asks his TAs to read the course material through the lens of an undergraduate to determine how the materials may be improved or clarified. (Hopkins 855:1-856:4.) Dr. Hopkins also takes his TAs into the laboratory and reviews some of the experimental methods that will be used throughout the term. (Hopkins 856:24-857:8.) He will ask his TAs to do a trial run of an experiment and

then critique how they teach the experiment. (Hopkins 857:8-16.) When the course begins, Dr. Hopkins attends the laboratory sections to speak with the TAs and observe their actions. (Hopkins 859:11-19.) With respect to grading, he works with his TAs to develop a rubric, challenging them to think critically about what they should be looking for when they grade. (Hopkins 863:9-864:22, 865:20-866:4.) He then asks his TAs to grade in “draft form,” placing sticky notes on the page rather than marking up the documents. (Hopkins 866:7-867:9.) Dr. Hopkins and the TA will discuss the TA’s approach to grading and how it can improve. (*Id.*)

- Kenneth Warren, a witness called by Petitioner and an English Language and Literature professor, extensively mentors his students. Dr. Warren meets with his TAs to discuss “what the expectations are” and “what [the] points of emphasis” are for papers he assigns to his students. (Warren 1941:9-16.) He teaches his TAs to grade papers by splitting the grading for a course with them and then reviewing the grading they do to ensure it is consistent with his expectations. (Warren 1940:6-13, 1945:14-17.) Allowing TAs to grade assignments has “an instructional component for the graduate student, as I say, to give them guidance on how I think a paper ought to be graded.” (Warren 2002:16-19.) He also provides his TAs with an opportunity to guest lecture if they desire to do so. (Warren 1947:4-10.) Prior to that lecture, he is available to meet with the TA to discuss how to approach the lecture. (Warren 1960:13-1961:3.) For example, a PhD student “might say, I’m debating between talking about these three texts or do you think it would be better to talk about two . . . [a]nd I would give a response . . . [t]alk about all three or three . . . is too many or something of that sort.” (*Id.*) After the lecture, Dr. Warren meets with the TA “and I

would ask them how they thought it went, get their sense of [how] things [went] and then I would point out what I thought were strengths and weaknesses in the preparation, the content and the delivery [of their lecture].” (Warren 1959:21-1960:6.) Dr. Warren also engages in a collaborative process with his TAs to develop paper topics, final exams, and quizzes for his courses. (Warren 1954:11-23, 1957:1-3.) He believes that TAs benefit from this collaborative process because they learn how to create an assignment or exam that allows them to evaluate the effectiveness of their instruction and because “they may in [their] future career courses they teach decide [] to give an exam, and it’s good for them to know how to put together a fair exam.” (Warren 1955:6-23, 1957:4-7.)

In addition to the individually tailored mentoring provided by faculty, there is extensive mentoring for PhD students who elect to teach in the Core. In some ways, the mentoring in the Core is “even more rigorous,” than the one-on-one faculty mentoring. (Robertson 531:1-5.) At the outset of the school year, there is an orientation workshop for all teachers in the Core aimed at ensuring that graduate students “are as successful in teaching in the [C]ore,” as possible. (Wild 345:25-346:15.)

Aside from the orientation, all Core faculty and graduate student teachers meet on a weekly basis to discuss the upcoming week’s course topics. (Wild 341:24-342:4; Nirenberg 149:2-3; Robertson 531:5-11, 531:18-532:1; Hilal 1847:3-1848:1.) During these meetings, graduate student teachers have an opportunity to “discuss the readings that were assigned for that week . . . and then we would discuss techniques for teaching it. . . .” (Hilal 1847:3-1848:1; *see also* Wild 343:11-344:12; Nirenberg 149:5-15.) The meetings have “back and forth discussion[s]” where “instructors would share things that they had tried in class that had worked,

and other people perhaps shared things that didn't work" (Hilal 1847:9-14.) During these meetings, graduate student teachers also have an opportunity to present a lesson plan to the group for an upcoming week. (Wild 343:11-344:12.) Moreover, all graduate student Lecturers in the Core are formally observed lecturing at least once by the Core Coordinator, the faculty member running the Core Sequence. (Wild 344:15-345:4.)

Petitioner's witnesses corroborated the mentoring they received from faculty members. Nicole Morse, a PhD student in Cinema and Media Studies, was unhesitatingly effusive on the many ways that a TA benefits and learns from the mentoring of faculty members. For example, Ms. Morse discussed the extensive mentorship she received from Dr. Daniel Morgan when she was a TA for his class. (Morse 1796:10-21.) According to Ms. Morse, Dr. Morgan provided her with tasks that were focused on teaching and pedagogical development. (Morse 1796:14-16.) Dr. Morgan also gave Ms. Morse "detailed feedback" following her guest lecture in his course. (Morse 1796:13-14, 1800:22-24.) Specifically, Ms. Morse and Dr. Morgan discussed the style in which she presented, the substance of her presentation, and other ways in which she could improve. (Morse 1800:25-1801:8.) Dr. Morgan advised Ms. Morse that she should "structure future lectures as 10 to 15 minute segments and not attempt to construct an argument that extends over 80 minutes" (Morse 1801:9-15.) Ms. Morse testified that she agreed with the feedback Dr. Morgan provided, and that her subsequent experience has suggested that his advice was correct. (Morse 1801:16-19.) Ms. Morse admitted that she "**greatly benefitted**" from Dr. Morgan's TA mentorship and the mentorship of other faculty. (Morse 1797:17-23, 1801:20-22 (emphasis added).) In instances where Ms. Morse felt that she received less faculty mentoring, she readily admitted that had she been the professor, she would not have changed a thing about

the mentoring she received and that “[t]here’s nothing they could have done differently” (Morse 1810:8-20, 1812:22-1813:2.)

Petitioner witness Katerina Korola also boasted about the mentorship she received from a Professor for whom she was a TA. (Korola 1371:14-22.) Ms. Korola described how Professor Martha Ward read the comments Ms. Korola made on student papers and provided feedback on the comments. (Korola 1371:15-17.) Ms. Korola said that this feedback was “**invaluable.**” (Korola 1371:17 (emphasis added).) The feedback Ms. Korola received from Professor Ward “helped [her] realize places where [her] language was leading, but also places where tone might impact the way a student receives a comment.” (Korola 1371:18-20.) Ms. Korola said that she has been “**very lucky**” and that she has “had very good teaching experiences, including with Professor Jackson,” another Professor she was a TA for. (Korola 1371:20-22 (emphasis added).)¹⁰

¹⁰ Petitioner did call witnesses who – for their own personal reasons – did not take advantage of Chicago’s pedagogical mentoring. PhD Sociology student Danya Lagos claimed that she received very little pedagogical training and that she received little to no guidance during her teaching assignments. (Lagos 1718:2-4.) Her testimony, however, portrays not someone who received no guidance, but someone who thought she had nothing left to learn. Indeed, Ms. Lagos testified that she “did teach elementary school for two years before entering graduate school, and that honestly gave me a much better pedagogical experience,” insinuating that her elementary education experience was all she needed to be a successful college-level instructor, and discounting that there was anything left for her to learn through her PhD educational teaching experiences. (Lagos 1717:21-1718:5.) Consequently – although hardly believable – Ms. Lagos testified that even after completing her teaching requirements, she felt no more capable as a teacher than she did when she started as a PhD student. (Lagos 1745:20-1746:23.)

Similarly, William Kong, a PhD student in Computer Science, was purportedly called to testify to paint a picture of a student who was not taught how to teach. The picture he painted, however, was one of a student who was unteachable – in his view – because he was independent, smarter than his advisor, considered talking to his advisor a waste of time, viewed him as someone who was of no use to him on his paper, and had “been there/done that” with his prior TA experience as an undergraduate at the University of California Santa Cruz and from his summer internship at the Sandia National Laboratories. (Kong 1167:11-18, 1180:12-24, 1184:19-1185:11, 1187:18-1188:16, 1193:19-1194:6, 1202:8-23, 1206:19-1207:25.)

5. *At Chicago, teaching students to teach starts early and may continue throughout the tenure of Chicago's PhD graduate students.*

To prepare its graduate students for careers as future university professors, Chicago provides an education to its PhD students through Division-specific pedagogical seminars, handbooks tailored to all aspects of being a TA, the Chicago Center for Teaching (“CCT”), and the Writing Program, including its “Little Red Schoolhouse” course.

- a. *Divisional and Departmental pedagogical courses are designed to teach teaching for parochial purposes.*

Various Divisions/Schools, and Departments/Programs within Divisions/Schools, offer a wide variety of pedagogy courses for their PhD graduate students.

In the Humanities Division, for example, the majority of Departments have their own pedagogy programs. (Wild 370:20-22.) In Romance Languages and Literatures, PhD students are required to take a formal credit-bearing pedagogy course. (Robertson 525:5-16; Er. Ex. 26 at 2.) The purpose of this course is to ensure that students have a basic set of skills and knowledge before they enter the classroom. (*Id.*) Germanic Studies has a similar pedagogy course called “Acquisition and Teaching of Foreign Languages,” where students gain an introduction to methods of teaching languages, including syllabus and test design and lesson planning. (Wild 311:12-14; Pet. Ex. 8 at 4.)

The English Language and Literature Department also has an established pedagogy course that is mandatory for incoming PhD students. (Er. Ex. 66.) In their third year of the PhD program, English Language and Literature PhD students must enroll in a course called “Teaching Undergraduate English.” (Warren 1965:7-13.) The goal of this course is for graduate students to explore the elements of teaching English in an undergraduate setting. (Warren 1966:1-16.)

Among other things, the course covers learning how to construct a syllabus, how to teach writing

composition, how to create assignments, how to teach students with different learning styles, how to lecture, and how to handle “hot moments” in the classroom. (Er. Ex. 66; Warren 1966:21-1967:6, 1970:25-1971:22, 1973:13-18, 1973:25-1975:18.)¹¹

BSD offers pedagogy seminars that enable students “to acquire more upper level inquiry around the topic of teaching” (Prince 626:12-20.) These seminars, which were created at the request of graduate students and for the benefit of graduate students, are ideal for BSD students who want to enter career paths with a heavier teaching role. (*Id.*) Additionally, as discussed above, *supra* at p. 67, BSD offers a formal TA Training Course in lieu of one quarter of its teaching requirement. (Prince 603:22-24.)

The Chemistry Department has its own unique formal pedagogy program for all TAs. (Er. Ex. 43; Hopkins 836:5-23.) That program begins with orientation two weeks prior to the start of the Autumn quarter. (Er. Ex. 43; Hopkins 836:9-15; Phillips 1917:19-1918:21.) During the two-week orientation there is a continuous set of workshops to prepare students to teach. (Er. Ex. 43; Hopkins 836:9-15.) These include:

- 3 hours on policies related to being a TA;
- 1.5 hours on inclusive teaching;
- 1 hour on how to lead a discussion group;

¹¹ As Dr. Warren explained, PhD students must learn how to construct a syllabus because a “syllabus is the way in which you convey to the undergraduates who are taking the course, the content of the course, the course plan in terms of how the material will be parceled [during] the course of the term depending on what kind of system we have.” (Warren 1970:2-10.) Similarly, learning to construct assignments is critical as it allows the PhD students to learn how to craft assignments that are “appropriate to serve the learn[ing] objectives of the course.” (Warren 1971:10-22.)

In stark contrast to Dr. Warren’s testimony, another of Petitioner witnesses, English Language and Literature PhD student Eric Powell, discounted the value of the Teaching Undergraduate English course. (Powell 2043:22-24, 2046:6-17.) Given Dr. Warren’s credentials, Mr. Powell’s credibility is seriously in question in that, in his view, there is no value in learning how to teach. (Powell 2050:2-21, 2051:12-2052:9.) Mr. Powell’s testimony is also starkly inconsistent with other Petitioner witnesses, who agreed that teaching is integral to PhD education, including but not limited to: Yali Amit (Amit 1282:2-15), Denis Hirschfeldt (Hirschfeldt 1340:15-22), Nicole Morse (Morse 1818:23-1819:13), Kenneth Warren (Warren 1977:10-21), and Yaquv Hilal (Hilal 1894:2-11.)

- 1 hour on making the most of the teaching experience;
- 1 hour on ethics in the classroom;
- One-half an hour on advice for international TAs;
- 22.5 hours of practice labs where students learn to run the labs they will be leading while TAs; and
- 12 hours of practice discussion groups, where students practice running discussion groups.

(Er. Ex. 43; Hopkins 840:6-841:1, 844:1-845:1.) This pedagogical development continues throughout the year with an ongoing twice-weekly seminar course.¹² (Er. Ex. 44; Hopkins 836:16-23; Phillips 1919:10-1920:11.) As a result of this program, Chemistry PhD students need little, if any, individual faculty mentoring during the course to know exactly what to do as a TA.

b. *Divisions/Departments issue handbooks that teach students how to teach.*

The formal pedagogy programs provided by many Divisions are also complemented by handbooks that provide additional guidance for TAs. These handbooks, if used by the TAs, have the ability to guide the TAs to success during their teaching experiences.

BSD makes a TA handbook available to its PhD students, which provides detailed guidance on how to TA. (Pet. Ex. 85.)¹³ The BSD TA Handbook discusses how a TA should

¹² Chemistry PhD student Andrew Phillips acknowledged his completion of both the two-week TA training and the formal Chemistry pedagogy seminar course. (Phillips 1899:22-24, 1918:7-21, 1926:19-23; Er. Exs. 43, 44.) While he did not find all of the sessions useful, he noted that he had significant experience as a TA while he was an undergraduate student at The University of Michigan, in the same courses he assisted in at Chicago. (Phillips 1926:24-1927:7.) Thus, he already felt prepared to be a TA at Chicago.

¹³ Petitioner Exhibit 85 is one of the exhibits that Chicago argued should be deemed irrelevant because it was not properly introduced into evidence. (Tr. 2077:6-21.) Therefore, its citation above is without prejudice to this position and should be ignored if Chicago's objection to the relevance of Petitioner's Exhibit 85 is sustained.

approach his/her first class, office hours, lecturing, discussion sections, laboratory sections, and examinations. (*Id.*) Each section includes detailed step-by step guidance for a TA. (*Id.*)

The Chemistry Department also issues a TA Handbook for its PhD students. (Er. Ex. 42.) This handbook covers – in detail – topics such as grading, attitude, ethics, teaching in the lab, discussion sessions, and methods of learning. (*Id.*)

c. *The Chicago Center for Teaching is the centerpiece of Chicago’s pedagogical educational process.*

CCT’s mission is to promote teaching as a scholarly practice. (Er. Ex. 33.) CCT utilizes a five phase model to teach graduate students to teach: (1) orientation; (2) fundamentals; (3) teaching advanced skills; (4) teaching one’s own class; and (5) launching. (Rando 753:7-10.)

“Orientation” is the process through which CCT assists graduate students to begin their transition from student to teacher. (Rando 753:21-754:5.) The “fundamentals” phase is designed for students who are in the classroom for the first time. (Rando 754:8-17.) At this phase, CCT offers various seminars aimed at teaching the fundamentals of teaching. (Er. Ex 36.) The “teaching advanced skills” phase is designed for students who have had a few teaching assistantships, but want to take their teaching to the next level and learn advanced skills and techniques. (Rando 754:20-755:4.) In this phase, the CCT offers seminars on various topics, including, diversity and inclusion in teaching, effective lecturing, and techniques for grading. (Rando 754:22-755:2.) The “teaching your own class” phase is intended to prepare a student to make the transition from TA to Lecturer. (Rando 755:7-14.) Finally, in the “launching” phase, CCT prepares students to make the ultimate transition upon graduation from student to faculty member. (Rando 755:18-756:1.)

CCT has designed a number of programs to complement each phase of its model. These programs include: (1) Teaching@Chicago; (2) the Course Design and College Teaching Course;

(3) the College Teaching Certificate Program; (4) departmental and subject-specific seminars; and (5) teaching consultations.

Teaching@Chicago is a two-day orientation for new graduate student teachers aimed at preparing students to enter the classroom for the first time. (Er. Ex. 35; Rando 763:15-24.) The program consists of group sessions and breakout sessions. (Er. Ex. 35; Rando 763:24-764:7.) The Course Design and College Teaching Course is a quarter-long course that takes students through the process of designing a college course, including identifying key principles of course design. (Er. Ex. 37; Rando 771:18-772:14.) The College Teaching Certificate, a program that requires students to participate in a number of workshops and CCT programs, was designed to provide a roadmap to graduate students for pedagogical development. (Er. Ex. 38; Rando 774:23-776:10.) When students finish the program, they receive a Certificate and a notation on their transcripts, providing a credential they can use as a conversation starter during future interviews for faculty (and other) jobs. (Rando 776:11-16, 777:3-7.)

CCT also curates pedagogy seminars for specific departments where first-time TAs can meet in a group with a CCT representative and other TA peers to discuss approaches to teaching.¹⁴ (Er. Ex 36; Rando 766:8-767:3.) In addition, CCT curates subject-specific workshops led by CCT staff. (Rando 768:25-769:13.) Some of the topics include: effective lecturing, mentoring skills, and effectively leading and utilizing small group discussions. (*Id.*) Students find these seminars to be very useful. For example, Nicole Morse, a Cinema and Media

¹⁴ The Divinity School has developed programs to complement the offerings of the CCT for PhD students studying divinity. The Craft of Teaching is the Divinity School's "departmental pedagogical program specifically focused on preparing students to teach in the academic study of religion in a wide variety of institutional context[s]." (Owens 1021:5-9.) The program includes a "series of workshops and presentations" including workshops focused on "delivering a lecture in a large course, how to teach an introduction to the study of religious course . . . , public speaking workshops, [and] preparing a syllabus." (Owens 1021:11-1022:12.) The Craft of Teaching program also offers a Craft of Teaching Certificate, which complements the CCT College Teaching Certificate. (Er. Ex. 48; Owens 1018:22-1019:2, 1019:21-1020:1.)

Studies PhD student, has taken several seminars and workshops from CCT. (Morse 1820:4-11.) She testified that she has greatly benefitted from these programs and that she is a “better teacher because of these courses.” (Morse 1820:12-14, 1820:21-1821:1.)

In addition to formal pedagogy programs, CCT also offers graduate students an opportunity to be observed and receive feedback when they lecture, through the use of teaching consultations. (Er. Ex. 40; Rando 779:13-16.) Specially trained Teaching Consultants attend and videotape a graduate student’s lecture and then provide feedback to the graduate student following the lecture. (Er. Ex. 40; Wild 305:21-25.)

d. *The Writing Program*

The Writing Program is a voluntary program for PhD students that teaches them the pedagogy of writing. For aspiring Writing Interns, the program offers a quarter-long course called Pedagogies of Writing, which introduces “students to [the Writing Program’s] particular approach to writing, [its] particular pedagogies of it, [and its] particular analysis of writing” (McEnerney 1553:8-16, 1154:6-13.) The course also teaches PhD students the art of “running writing seminars, responding to student papers, [and] looking at prompts” (McEnerney 1554:19-22.) For aspiring Writing Lectors, PhD graduate students must take a similar course to the Pedagogies of Writing course. (McEnerney 1574:2-12.)

A Writing Lector is a PhD student who holds small weekly writing seminars for students in the Writing Program’s “Little Red Schoolhouse” course. (Er. Ex. 61.) The Little Red Schoolhouse is the “advanced writing course that we teach to graduate students and to undergraduates.” (McEnerney 1567:22-1568:2.) Writing Lectors review and critique short papers each week, provide feedback to the students, and also lead seminars focused on certain aspects of writing. (McEnerney 1574:13-1576:3.)

6. *Unlike in Columbia, PhD graduate students at Chicago are not “thrust wholesale into” teaching opportunities.*

At Chicago, PhD graduate students are not “thrust wholesale into” teaching opportunities. (Nirenberg 155:13-156:3.) Indeed, not a single witness testified (in words or in substance) that PhD graduate students at Chicago were “thrust wholesale into” teaching opportunities.

If anything, the record evidence overwhelmingly demonstrates the contrary – that thrusting students wholesale into teaching is the exact opposite of what happens at Chicago. (Nirenberg 155: 8-156:3 (“I can’t imagine a context . . . where we would thrust students . . . far from thrusting students wholesale into any teaching context, that’s what we would avoid. Abhor.”).) As described above, (at pp. 19-38, *supra*), PhD students at Chicago are provided extensive mentoring, resources and education to aid them in teaching. This includes TA handbooks (*see, e.g.*, Er. Ex. 42 and Pet. Ex. 85), pedagogical development opportunities for teachers of all levels through CCT (Rando 753:7-756:2), and formal departmental pedagogy courses and programs, such as those in Chemistry, BSD, Romance Languages and Literatures, Germanic Studies, and English Language and Literature. (Er. Exs. 26, 28, 43, 44, and 66; Robertson 525:5-16; Wild 311:12-14; Prince 604:7-19.)

Additionally, PhD students are provided with hours of individualized mentoring by faculty members while they are a TA to aid them in refining their teaching skills. (Prince 609:21-611:20, 612:7-14, 613:1-14, 616:3-10, 622:10-24; Wild 305:4-12, 307:1-6; Robertson 514:24-516:7, 517:23-518:14; Nirenberg 141:25-142:25, 143:18-144:20, 147:5-10, 148:11-149:3; Hopkins 854:18-856:4, 856:24-857:16, 859:11-19, 863:9-864:22, 865:21-866:4, 866:7-867:14; Warren 1940:6-13, 1941:9-16, 1945:14-17, 1947:4-10, 1954:11-23, 1957:1-7, 1959:21-1961:3.) The mentoring covers all areas of teaching, including grading methods, lecturing, and leading discussion groups. (*Id.*)

Moreover, unlike in *Columbia*, no witness testified that they were forced to prepare exams or plan a lecture in the Core Curriculum without any inculcation of teaching skills. To the contrary, witnesses testified that the curriculum in the Core is largely predetermined and that all teachers in the Core meet weekly to discuss the approaches to the upcoming weeks' lesson plan. (Nirenberg 191:2-10; Hilal 1847:3-1848:1, 1851:18-24; Wild 334:12-17; Robertson 576:11-15; Er. Ex. 17.)

7. *Notwithstanding the importance of learning to teach, Chicago ensures that research on the student's dissertation is a priority; students are encouraged not to teach beyond their requirements.*

While Chicago is dedicated to its PhD students' learning how to teach, it never forgets that the central focus of PhD education is research done in pursuit of new knowledge for one's own dissertation. In light of that, Chicago takes at least two measures to ensure that teaching is not "work" that interferes with student research.

First, the Divisions/Schools limit the time students are permitted to spend teaching each week. (Nirenberg 161:7-17; Robertson 505:1-3; Owens 1011:19-21.) PhD students are limited to no more than 20 hours per week spent doing anything other than coursework and research, including participating in teaching experiences. (Pet. Exs. 2, 11;¹⁵ Nirenberg 161:14-17; Robertson 505:22-506:2.) Moreover, many Divisions/Schools and Departments/Programs within the Divisions/Schools have issued guidance on how much time should be spent per week on a given teaching opportunity. (*See, e.g.*, Er. Ex. 25; Robertson 506:23-507:1; Nirenberg 161:7-9.) Petitioner witness and Professor of Statistics and Computer Science, Yali Amit, also confirmed

¹⁵ Recognizing that Petitioner's Exhibits 2 and 11 are intended to limit the amount of time on anything unrelated to dissertation research, it should be noted that it is commonplace for employment-related words such as "work" to be used in academia as an imperfect shorthand to describe "effort," a concept that is totally unrelated to labor or employment. A good example of this comes from PhD student Eric Powell's own testimony, where he used the word "work" on no less than five occasions to refer to an academic paper that would be the subject of a "Workshop," which is a study group or intellectual community. (Powell 2041:17-2042:15.)

the importance of monitoring the hours a PhD student devotes to a teaching experience to ensure that the student is still focusing on his/her dissertation research:

Q. You testified that you asked your TAs how many hours a week they spend as a TA?

A. Uh-huh, yeah.

Q. You asked them that because you have a concern that you want to make sure that they have enough time to do enough research on their dissertation?

A. Yes, correct.

(Amit 1285:9-16.)

Second, Chicago generally discourages students from teaching in excess of their academic requirements. (Nirenberg 164:3-5; Robertson 490:22-24; Owens 1001:12-14.) The reason for this is Chicago's desire that once students have obtained the necessary pedagogical development, they will focus on their dissertation and graduate in a timely manner. (Nirenberg 163:15-164:11; Robertson 505:5-10; Owens 1001:16-24.)

8. *Chicago does not support graduate students in order to benefit from their teaching; such benefits are a result of their experiential learning.*

The majority of graduate student teaching experience is obtained in undergraduate courses. Any benefit to undergraduates from the good teaching done by graduate students who are being trained to become future faculty is a byproduct of Chicago's intended beneficiary: the graduate students who are being trained to become future faculty. (Robertson 566:5-13; Wild 423:3-424:8; Prince 699:3-12, 700:3-19.)

The same is true for any benefit to faculty members who are assigned to mentor TAs how to teach. While it is true that TAs may assist with various teaching components associated with a course, having a TA does not save time for a supervising faculty member, and may actually

result in additional work. (Robertson 520:7-13; Wild 308:10-14; Nirenberg 202:19-203:7; Owens 1026:9-21.) This is because the faculty member must dedicate a large amount of time mentoring the student, teaching him/her to teach and making sure that the student benefits from the experience. (Robertson 520:11-13; Wild 308:15-21; Nirenberg 202:19-203:7; Owens 1026:9-21.) In the event that a faculty member does save time from any teaching by a TA, this confluence of cause and effect is simply a result of their teaching graduate students to be teachers. (Warren 1981:12-18.) As Petitioner's witness, Dr. Warren, confirmed during his cross examination:

Q. So when you and the university that you're a part of fulfill this responsibility to teach grad students how to grade, an unavoidable byproduct of that is that you get more time to focus on making that lecture perfect or doing other things in the course, right?

A. Right.

(Warren 1981:12-18.)

9. *Unlike as found in Columbia, Chicago does not discipline or remove PhD students from teaching opportunities for poor performance.*

At Chicago, learning to teach is purely an academic requirement and is treated like any other course requirement. As such, Chicago does not discipline TAs for poor performance. (Nirenberg 273:3-7; Robertson 511:5-7; Wild 338:20-23, 339:16-19; Owens 1017:11-12 (describing a particular occurrence).) Instead, Chicago simply continues to mentor and train TAs until they improve their teaching skills. (Nirenberg 256:2-16; Robertson 511:5-7; Wild 336:19-337:8; Hopkins 869:7-16; Owens 1016:10-12; Prince 631:15-19.) In no event does Chicago remove PhD students from a teaching opportunity for poor performance. (Nirenberg 172:13-19; Robertson 511:23-512:2; Wild 338:24-25; Owens 1016:13-15; Prince 632:6-8.) Unlike someone who would be treated as an "employee," and might be penalized for poor performance, even if a

student performs poorly as a TA, Chicago will not withhold credit or funding for that teaching assistantship. (Robertson 512:3-4, 512:16-23; Wild 339:16-19; Hopkins 869:19-24; Owens 1017:19-25; Prince 632:9-15.)¹⁶

ii. Because Chicago is first and foremost a research institution, learning how to research is paramount to PhD education.

The University of Chicago is first and foremost a research institution. (Nirenberg 126:23-127:3; Amit 1286:7-13; Hirschfeldt 1344:9-10.) As such, to educate its PhD students, Chicago considers learning how to research a critical component of PhD education.

1. At Chicago, a PhD Student Research Assistant is a graduate student doing lab research on his or her dissertation.

It is axiomatic that all PhD students conduct research to complete their dissertation. Consequently, lab research is central to the PhD programs of students in PSD and BSD. (Hopkins 871:17-23; Prince 638:2-6.) But, that is not the only reason that these students are taught to do lab research. They are also preparing for the day when they will run their own labs. (Hopkins 871:25-872:16; Prince 638:8-10.)

In furtherance of this educational goal, PhD students begin to conduct lab research early in their academic program. (Hopkins 873:12-16; Prince 627:8-14.) Indeed, conducting lab research is a requirement for all degrees within BSD and PSD.¹⁷ (Hopkins 871:18-20; Prince

¹⁶ In one instance, BSD withheld credit for a TA who “failed” to perform (as opposed to one who “poorly” performed). (Prince 632:16-20.) In that case, the student was not actually fulfilling his role as a TA (*e.g.*, he was observed sleeping during the lecture and, therefore, could not handle the discussion sections and received bad evaluations from students in the course). (Prince 633:3-9, 14-16.) When these issues were brought to Dr. Prince’s attention by undergraduates and the instructor, she met with the student and the student admitted he had not taken the opportunity seriously. (Prince 633:12-16.) As a result, the student agreed to take the TA Training Course and then re-take the teaching assistantship. (Prince 633:16-19.) The student did so, performed very well, and completed his teaching requirement (and his PhD). (Prince 633:19-21.)

¹⁷ While some programs of study do not actually conduct research in a physical lab, they are still conducting experiments and tests in furtherance of their dissertation. (*See, e.g.*, Kong 1198:15-19 (stating that “as a computer scientist, the lab could be, you know, like my bedroom . . . My kitchen . . . It could be a cafe somewhere.”).)

638:2-6.) When University PhD graduate students conduct research in a lab, they are doing research *exclusively* in connection with their dissertations. (Hopkins 883:1-5; Prince 673:5-9.) Even Petitioner witnesses Kamil Ahsan and Andrew Phillips admitted this. (Ahsan 1658:22-25; Phillips 1913:7-1914:1, 1921:21-24, 1923:25-1924:7.)¹⁸ Because the student’s research aligns with the interests of his or her faculty advisor, the research a student does is always in furtherance of his or her dissertation topic. (Hopkins 876:20-877:13, 883:1-5; Prince 668:20-669:1, 673:5-9.)

Recognizing that the research is in furtherance of the student’s dissertation, BSD and PSD do not limit the number of hours a student can spend in a lab in any given week, nor do they track the number of hours students spend in the lab. (Hopkins 888:13-15; Prince 677:16-18.) Chicago believes that it cannot expect students to be successful in conducting their research if their hours in the lab are arbitrarily limited. (Prince 677:19-25.) Indeed, graduate students make their own schedule and decide what experiments they will perform in a given week. (Ahsan 1664:24-1665:20; Phillips 1915:15-1917:2 (explaining that he does not have set hours in the lab and there is no formal tracking of each student’s “work” in the lab).)

Similarly, a student’s funding is not affected by the time he/she spends in the lab. (Hopkins 888:16-18; Prince 678:4-7.) Funding is not increased for spending more time in the lab. (Hopkins 888:19-21; Prince 678:8-11.) The only beneficiary of spending more time in the lab is the PhD student, who may make better and faster progress toward completing his or her dissertation research. (Hopkins 889:2-4; Prince 678:15-18.) But ultimately, it is always the student’s choice how much time he or she spends in the lab. (Hopkins 889:5-8; Prince 678:19-

¹⁸ While Mr. Ahsan attempted to claim that his research in the lab was “almost exclusively” related to his dissertation research, upon further cross-examination he admitted that the other nominal “side-projects” he did were a function of a previous focus of his dissertation that he had moved away from. (Ahsan 1658:22-1660:14.)

22; Ahsan 1664:24-1665:20.) Significantly, none of the four PSD and BSD student witnesses contradicted any of the foregoing.

2. *Graduate students decide which lab they wish to join.*

To conduct their dissertation research, students elect to join a lab and pair with a faculty advisor to guide them through their research. (Hopkins 872:25-873:2; Prince 668:12-14.) The matching process varies slightly by Division and Department/Program, but one constant is that the graduate student chooses the lab he/she affiliates with. (*See, e.g.*, Hopkins 872:25-873:2; Prince 666:17-19.)

In Chemistry, a lab science program in PSD, students elect to join a Research Group by the end of their first quarter in the PhD program. (Hopkins 873:12-16.) A Research Group is a group of researchers affiliated with a faculty member. (Hopkins 873:4-11.) In addition to running the lab, the faculty member also serves as the research advisor to his or her graduate students. (Hopkins 888:3-6.) Prior to the beginning of their first quarter as PhD students, incoming Chemistry students attend a two-day symposium where faculty members present the research projects being conducted in their laboratories. (Hopkins 874:21-875:9.) After learning about the research taking place in various labs, students meet with the faculty members in the labs that they are interested in and decide on the lab with which they would like to affiliate. (Hopkins 877:19-878:2.) A key motivation of students in choosing a lab is whether their dissertation research interests align with the focus of the faculty member's lab. (Hopkins 876:20-877:13.)

In some cases, a Chemistry PhD student will visit Chicago in the summer prior to matriculating and spend time researching in a lab. (Hopkins 878:11-18; Phillips 1911:7-15.) In those cases, the student may decide on the lab he or she wishes to affiliate with based on his or

her summer research. (Phillips 1911:7-15.) That was the case for Andrew Phillips, a Chemistry PhD student. Mr. Phillips spent the summer before his first year as a PhD student conducting research in the lab of Dr. Bozhi Tian. (Phillips 1911:7-15, 1922:9-1923:7.) During that time, Mr. Phillips enjoyed the research he conducted in Dr. Tian's lab and felt that it aligned with his research interests. (Phillips 1923:6-15.) As such, he decided to join Dr. Tian's lab, where he is now conducting research toward his dissertation. (Phillips 1911:5-7.)

In BSD, the process is slightly different – but to the same effect. All students begin their PhD program by doing three rotations through various labs. (Prince 663:23-664:15.) The lab rotations are critical for students to determine which lab they believe will be a good fit for their dissertation research. (Prince 664:16-24.) One additional benefit of the rotations is that a student has an opportunity to observe the mentoring style of the faculty member in a lab. (Prince 664:25-665:3.) Mentoring style was a very strong consideration of Petitioner witness and BSD PhD student, Kamil Ahsan, who said that he chose to affiliate with Dr. Prince's lab because of her mentoring skills. (Ahsan 1393:7-11.) Indeed, Mr. Ahsan testified that Dr. Prince “is very forthright about how she feels about how you're doing . . . [h]er feedback is meaningful and often very positive . . . [s]he is very encouraging . . . gives credit where credit's due . . . [and] she always makes herself available whenever you need her really to talk.” (Ahsan 1650:6-14.) This rotation process enables students to find the best fit for them and their research interest, and also to ensure that the lab culture fits well with the student's needs. (Prince 664:16-24.)

After completing the third rotation, BSD students reach out to the faculty members they desire to affiliate with and, if there are openings, the student affiliates with the lab of his or her choice. (Prince 665:22-666:24.) A BSD student is never merely assigned to a lab. (Prince 665:24-666:19, 667:8-10.) Indeed, if a student has still not found a lab to affiliate with after the

third rotation, BSD will permit its students to go through another rotation, which is exactly what PhD student Kamil Ahsan did. (Prince 667:3-7; Ahsan 1648:5-25.)

In both PSD and BSD, by choosing a lab, the student is also choosing his or her research advisor. (Hopkins 888:3-6; Prince 668:12-14.)

3. *Chicago trains graduate students in ethics to prepare them to be future scientists who may eventually run their own labs.*

Chicago takes seriously its obligation to train all PhD students in ethical research practices. Every PSD and BSD PhD student is required to complete a course in responsible and ethical research practices. (Prince 674:20-25; Swanson 1080:10-17.) In PSD, all incoming PhD students complete a Responsible Conduct in Research (“RCR”) orientation. (Er. Ex. 49.) The program is administered online and specifically tailored to the Department/Program where the student was admitted. (*Id.*; Swanson 1080:18-21.)

In BSD, all first year PhD students take a quarter-long course on ethics. (Prince 674:22-25.) This course covers basic ethical issues that may arise during research. (Prince 675:18-676:10.) Additionally, all PhD students are required to attend a senior ethics course in their fourth or fifth year. (Prince 675:2-5.) The senior ethics course is primarily taught through small group discussions and focuses on more advanced ethical issues that a student is likely to or may have already encountered in his or her research. (Prince 675:8-18.)

4. *Mentoring of Lab Research Assistants*

Once affiliated with a lab, PhD students are consistently guided through their dissertation research by their research advisor. (Hopkins 883:13-884:1; Prince 639:19-22.) It is a “guided climb” by the research advisor from the start of a student’s research through graduation. (Hopkins 883:13-884:1.) Students begin with “only [] book knowledge,” and with less experience designing and implementing experiments. (*Id.*) While the mentoring varies from

research advisor to research advisor, by self-selecting the lab they want to affiliate with, PhD students have made an informed decision as to the mentoring style they believe works for them. (Prince 664:25-665:7.)

Research advisors provide support to their graduate students in multiple ways, including: (1) meeting regularly with students to mentor them in developing a research program; (2) mentoring the student in the creation of written work product; (3) mentoring the student in the lab, including hands on mentoring and guidance; (4) mentoring students on how to improve communication skills; and (5) mentoring the students on how to approach and troubleshoot experimental issues. (Prince 640:8-641:11.)

For the benefit of the graduate students, research advisors often formally meet weekly with their students, in addition to other informal interactions. (Hopkins 892:12-19; Prince 641:22-24; Phillips 1914:6-8; Ahsan 1399:8-10, 1662:14-1663:1.) In these meetings, the advisor and the student discuss the student's research and work together to develop an experimental plan that will test the student's hypotheses. (Prince 641:24-642:3; Hopkins 885:5-11, 886:5-17; Phillips 1914:14-19; Ahsan 1663:2-13.) One key aspect for the development of an experimental plan is to teach students to establish testable hypotheses and create experiments to test those hypotheses. (Prince 644:2-12.) For example, Dr. Hopkins works with his graduate students to sketch out the first few experiments to test their hypothesis. (Hopkins 886:5-17.) A common issue for graduate students is that they do not design experiments narrowly enough to test their hypothesis. (Hopkins 891:20-892:7.) Dr. Hopkins teaches his graduate students to avoid these problems. (Hopkins 892:8-25.) In these meetings, the student and the advisor also discuss other topics including how to draft a dissertation proposal or a manuscript. (Prince 642:4-16.) Graduate student Kamil Ahsan corroborated this testimony, acknowledging that he meets with

Dr. Prince weekly to discuss his data, his career plans, his experiments, his plans toward the publication of his research, and personal issues. (Ahsan 1663:2-18.)

With respect to mentoring related to the PhD students' writing and scholarship, research advisors teach their students to develop proposals and manuscripts. (Prince 645:10-646:7.)

Sometimes, this mentoring includes the research advisor reviewing PhD graduate student drafts of dissertation proposals, fellowship proposals or manuscripts and providing feedback on those drafts. (Prince 645:22-646:4.) It is imperative to the student's development as an independent scientist that he/she learns to write in the scientific format. (Prince 645:10-20.)

In the lab, the research advisor teaches his or her graduate students to operate complex equipment that they will use to conduct their dissertation research. (Prince 650:8-651:2.) Some of the equipment and research methods are nearly impossible to learn without the expertise of the research advisor. (Prince 650:21-23.)

To develop as independent scientists, another key component of the graduate student's education is the improvement of communication skills. (Prince 640:23-641:2.) Dr. Prince teaches her graduate students this skill by asking them to present an update of their research to the rest of the lab. (Prince 651:22-652:16.) Following the presentation, the student receives feedback from other people in the lab and from Dr. Prince. (Prince 652:6-9.)

The final component of a research advisor's role is teaching the student to troubleshoot difficulties that arise during research as a result of the "fairly high failure rate" that occurs "for any researcher, including me [Dr. Prince]." (Prince 655:10-23; *see also* Hopkins 892:8-25.)

Research advisors have significant experience conducting research, and as such, are capable of troubleshooting issues that arise during research. (Prince 655:18-23.) Research advisors teach their graduate students to overcome these issues. Dr. Prince, for example, sits down with her

graduate students and walks through their lab notebooks to try to determine where a problem occurred. (Prince 656:6-24.) She then suggests ways for the students to improve their experiment the next time around. (*Id.*)

C. Financial Support For PhD Students At Chicago

i. Graduate Aid Initiative (“GAI”) Funding

PhD students in SSD, the Humanities Division, the Divinity School and SSA participate in a funding program called the “Graduate Aid Initiative,” commonly referred to as GAI. (Nirenberg 121:9-13; Robertson 483:10-15; Owens 985:7-11.) Through the GAI, Chicago provides PhD students five years of guaranteed tuition, paid healthcare premiums and a yearly stipend. (Nirenberg 121:9-20; Robertson 483:18-20; Owens 986:14-19.) Over time, the stipend value has increased. (Nirenberg 122:3-6; Lagos 1712:17-1713:6.) Currently, the minimum GAI stipend is \$24,000 per year. (Nirenberg 122:1-2; Robertson 483:25-484:1; Owens 986:15-16.) In addition, students receive guaranteed summer funding of \$3,000 for three or four years, depending on his or her Division/School. (Robertson 487:11-16; Nirenberg 122:22-25; Owens 987:5-15.)

Divisions and Departments within Divisions are permitted to increase the stipend, and sometimes do. (Nirenberg 122:1-2; Er. Ex. 23.) For example, the Economics Department has a stipend of \$34,000 per year due to the need to compete with economics programs at other institutions. (Nirenberg 123:19-25.) The only condition placed on the receipt of PhD funding is a student’s satisfactory progress toward his or her PhD degree. (*See, e.g.*, Pet. Ex. 74 at 2-3; Pet. Ex. 98.)¹⁹

¹⁹ Petitioner may point to the use of the words “salary” and “compensation” in the attachments to Ms. Lagos’ admissions letter as evidence of “employment” status. (Pet. Ex. 74.) But, the overall context of the letter renders Petitioner’s conclusion illogical and erroneous. After all, if a TA were truly an employee, he/she could be terminated for poor performance as a TA. However, because the words “salary” and “compensation” are preceded

In GAI Divisions/Schools, a portion of the stipend provided to each student is earmarked for teaching opportunities. (Robertson 542:6-22; Nirenberg 159:23-160:6; Er. Ex. 45.)

Although they are not tax lawyers, Chicago witnesses testified as to their belief that the only reason this is done is so Chicago can comply with IRS tax law. (Nirenberg 160:24-161:1; Wild 435:3-10; Robertson 542:6-22.) Nevertheless, so long as the student meets his or her academic requirements, including teaching, the student will receive the total amount of the funding guaranteed under the GAI. Indeed, even Petitioner witness and Sociology PhD student, Ms. Lagos, admitted that despite a portion of her stipend being paid out at a different time while teaching, she did receive the full stipend she was promised. (Lagos 1713:7-19.) In the Divinity School, a stipend amount is only split in the quarters that a student is actually teaching. (Er. Ex. 45; Owens 990:23-991:2.) This is also done to comply with applicable tax laws. (Er. Ex. 45.) The amount of the stipend is split off and then distributed to the student throughout the quarter, less the applicable withholdings required by the IRS. (Er. Ex. 45; Owens 991:20-992:6.)

ii. Funding in the Physical Sciences Division and Biological Sciences Division

PhD Students in PSD and BSD receive full tuition, paid healthcare premiums, a stipend and, in many cases, a portion of their student life fee paid, upon admission to their program. (Swanson 1084:15-21; Prince 684:17-22; Er. Ex. 50.) The only condition of this funding is that the student continues to make progress toward his or her degree. (Swanson 1084:22-25; Prince 684:23-685:1.) Funding is generally guaranteed for a period of five years, and in practice, many

by a sentence that reads “[a]ssuming good academic progress and annual departmental recommendation, your award is for a total of five years,” the limiting context of this five-year guarantee constrains Chicago from taking any disciplinary action for poor teaching, provided Ms. Lagos is making good academic progress. The same is true for Petitioner’s Exhibit 98, to which Chicago objected. Beyond this, the fact is that offer letters in other Divisions do not use words like “salary,” “compensation,” or “remuneration.” (*See, e.g.*, Pet. Exs. 22, 28, 71.) Thus, if words taken out of context can be used to establish “employee” status, as Petitioner will contend, it follows that the absence of those same words from admission letters would establish “student” status. This illogical syllogism teaches that the Regional Director, respectfully, should not decide this case by a reference to a few words here or there.

students will remain fully funded through their graduation, which may be beyond five years. (Swanson 1084:22-25.) In PSD, the exact amount of funding varies by program.²⁰ (Er. Ex. 50.)

PhD students are not compensated for teaching or conducting research. (Prince 627:15-18.) These academic requirements are incorporated into a student's curriculum. (Hopkins 823:4-5, 871:18-20; Prince 602:19-21, 638:2-6; Er. Ex. 15A.) In some cases, portions of the stipend are taxed per IRS rules when a student takes on a teaching opportunity or conducts research. (Swanson 1098:11-18.)

D. Privileges Extended to PhD Students at Chicago Are Exclusively for Students.

PhD students receive a multitude of privileges from Chicago. PhD students who enroll in the University Student Health Insurance Plan ("U-SHIP") have their premiums paid by Chicago as part of their financial aid package, generally through seven years of a program. (Nirenberg 121:18-19; Robertson 482:12-19; Swanson 1084:17-21; Prince 684:18-22; Owens 986:12-19; Er. Ex. 6.) U-SHIP is a platinum-level health insurance plan that provides enrolled students with the full spectrum of medical coverage for preventive and emergency medical care. (Niestat 67:15-23.) The yearly cost to Chicago to pay for the insurance premiums of PhD students is approximately \$3,600 per student. (Niestat 69:21-24; Er. Ex. 6 at 1.) Chicago also provides coverage for mental health benefits and student counseling. (Er. Ex. 7.) Students, unlike employees, are eligible for a need-based child care stipend. (Niestat 76:4-7, 77:10-12; Er. Ex. 9.) This program allows PhD students to obtain up to \$2,000 per year to "alleviate some of the

²⁰ Approximately eight students in BSD are consistently funded through divisional funding. (Prince 687:10-16, 688:10-15.) In these instances, students TA a course once a year beyond the Divisional teaching requirement. (Prince 687:17-24; DuBay 2008:18-20.) This is the case for Shane DuBay, a PhD student in Evolutionary Biology, who is not receiving any external funding in his field, whereas other PhD students in the Environmental Biology program are eligible and do receive external funding. (DuBay 2022:8-2023:11.) Due to Mr. DuBay's personalized lack of external funding, BSD provides Mr. DuBay with full tuition, a stipend and health insurance. (DuBay 2008:13-20.) Notably, Mr. DuBay's stipend is not subject to state and federal withholdings, nor does he receive a Form W-2 for his teaching, either in the quarters where he fulfilled his first two academic requirements or thereafter. (DuBay 2014:3-5, 2024:9-16.)

financial hardship” associated with childcare that students’ face while earning their degrees. (Er. Ex. 9.) Chicago also has a Graduate Student Parent Policy to assist new student parents in balancing their studies with their parenting obligation. (Niestat 73:14-22; Er. Ex. 8.) This policy is not available to employees. (Niestat 74:12-16.)

Chicago’s statutory employees receive a very different benefits package than the privileges extended to PhD students. Chicago employees are offered four different medical insurance plans based on their needs and the cost of the plan. (Er. Ex. 10 at 6.) Employee healthcare premiums are not paid by Chicago and cost employees between \$588 and \$7,440 per year for a full-time employee. (*Id.* at 7.) Chicago employees may also enroll in Chicago sponsored health savings accounts to help defray health costs with tax-free dollars. (*Id.* at 20.) They are also covered by Chicago for short-term disability and group life insurance and may choose to enroll in long-term disability and accident insurance. (*Id.* at 16.) Employees are eligible for the Adoption Assistance Program that provides financial support, up to \$5,000 (\$10,000 during an employee’s lifetime), for an adoption. (*Id.* at 28.) Other financial programs available to Chicago employees include: the Employer-Assisted Housing Program, which provides assistance to employees seeking to purchase a home in Chicago’s neighboring communities, flexible spending accounts and commuter benefits. (*Id.* at 20, 23, 30.) Graduate students – and indeed all Chicago students – are not eligible for **any** of these benefits. (Niestat 79:1-8.)

E. For Numerous Reasons, Master’s Students And PhD Students Are Different, And Merely Sharing The Same Title For Certain Activities Does Not Create Commonality.

Master’s students differ greatly from PhD students. Master’s programs at Chicago are intended either to prepare students to enter a PhD program or provide students with a

professional degree that can advance them in their chosen careers. (Nirenberg 127:9-19; Swanson 1074:25-1075:8.)

It is undisputed that, unlike PhD students, absolutely no Master's programs offered by Chicago contain an academic requirement that involves students teaching at Chicago. (Niestat 79:21-25; Robertson 539:6-10; Nirenberg 169:20-23; Owens 984:24-985:3; Swanson 1102:25-1103:1; Prince 601:5-12; Wild 352:24-353:1.) **As such, Master's students rarely teach.** (Robertson 539:6-7; Nirenberg 170:21-171:7; Owens 984:24-25; Swanson 1102:6-10; Prince 601:10-12; Wild 353:2-6.) Indeed, in Spring 2017, only ten Master's students had teaching opportunities. (Er. Ex. 11.) Moreover, it is undisputed that Master's students are not provided with multi-year funding packages like PhD students. (Swanson 1086:10-13; Robertson 482:20-483:6; Nirenberg 124:1-8; Owens 986:3-11.) At most, and in rare instances, Master's students may be awarded competitive merit-based scholarships, which provide some financial aid. (Wild 352:20-23; Robertson 482:25-483:6; Nirenberg 124:1-8; Owens 986:8-11.) Otherwise, Master's students are entirely self-funded.

F. Non-Lab Research Assistants Are Voluntary, Non-Teaching And Non-Research Opportunities For PhD Students To Learn A Different Skill.

Non-Lab RAs differ drastically from Lab RAs and graduate students who teach to fulfill an academic requirement. A Non-Lab RA conducts research, generally directly for a faculty member, for a publication or faculty member's project. (Nirenberg 177:22-178:2; Robertson 536:13-20; Owens 1033:4-13.) For example, Danya Lagos, a PhD student studying Sociology held a position as a Non-Lab Research Assistant for Professor Kristen Schilt, where she developed a survey for Professor Schilt's research and helped with the collection and organization of the data. (Lagos 1706:25-1707:12.)

Ms. Lagos and other Non-Lab RAs are paid by the hour or by the project. (Nirenberg 242:4-5; Robertson 577:14-578:2; Owens 1047:7-11; Vanderpoel 1470:18-19; Lagos 1706:8-10; Morse 1783:18-19, 1785:1-3.) The source of the funding for these tasks is generally a faculty member's personal research budget from Chicago. (Nirenberg 242:6-8; Robertson 578:3-7.) Payment is in no way tied to a student's doctoral fellowship funding. (Nirenberg 263:15-18.)

Students voluntarily seek out opportunities to be Non-Lab RAs. (Nirenberg 263:19-264:2; Vanderpoel 1486:10-12; Lagos 1747:4-6; Morse 1790:8-22.) Being a Non-Lab RA is **not** an academic requirement. (Nirenberg 185:11-14; Vanderpoel 1487:11-14; Morse 1790:20-22.) Instead, the student is often doing research on a topic selected by the faculty member, which has no material relation to the student's dissertation topic. (Robertson 578:11-24; Vanderpoel 1485:20-1486:3.) For example, Matthew Vanderpoel, a Divinity PhD student and Petitioner witness, testified that his Non-Lab RA position involved administrative tasks, helping a professor prepare for a class she was going to teach, obtaining citations for languages and gathering articles and books for the professor. (Vanderpoel 1471:4-18.) While a Non-Lab RA ordinarily will learn from interacting with the faculty member he or she researches for, Non-Lab RAs do not receive the same exhaustive mentoring provided to students teaching or researching for an academic requirement. (Owens 1033:14-19; *also compare* Nirenberg 179:14-20, 180:11-20 (interaction with Non-Lab RAs); Robertson 536:21-537:1 (same) *with* Robertson 514:24-516:7, 517:23-518:14 (interaction with TAs); Nirenberg 141:25-142:25, 143:18-144:20, 147:5-10, 148:11-149:3 (same).)

G. Workshop Coordinators Are Also Non-Teaching And Non-Research Experiences for Students to Volunteer for an “Organizational” Experience.

Workshop Coordinators also differ significantly from the other petitioned-for positions. PhD students from the Divinity School, Humanities Division, and SSD can become Workshop

Coordinators. (Robertson 537:2-8; Owens 1031:18-1032:4.) Workshop Coordinators solicit graduate students and outside faculty speakers to present on academic papers in progress (referred to as academic “work”), create a workshop schedule, and coordinate with the student and faculty presenters to provide papers to the workshop members in advance of the workshop discussion. (Korola 1360:11-19; Niestat 84:9-17, 89:9-13; Powell 2041:17-2042:15, 2035:15-2036:1; Vanderpoel 1473:14-17.) To help facilitate community among members of the workshop, Workshop Coordinators may coordinate food at the workshops sessions and even “bake” if they choose. (Korola 1360:20-21; Powell 2036:3-6.) Workshop Coordinators also gain experience managing the budget for the workshop (Korola 1360:22-23; Powell 2067:6-12) and curate the external speakers and PhD presenters for the year (Vanderpoel 1473:14-17; Powell 2066:21-2067:18, Niestat 89:3-4.) Like all members of the workshop, there is an expectation that the Coordinators will read materials submitted before their workshop sessions, and if they have not already identified a discussant for a particular workshop session, will be prepared to initiate the group conversation with questions to the presenter. (Korola 1361:9-24; Vanderpoel 1474:14-23; Powell 2036:6-15.) In their role as Workshop Coordinators, PhD graduate students have no involvement in teaching undergraduates or in doing research in a laboratory. (Niestat 89:14-20.)

On the whole, being a Workshop Coordinator is “a professional development opportunity, and it’s an opportunity for graduate students as they prepare for going into different professions to experience the different types of coordination involved.” (Niestat 90:9-13.) Unlike lab research, which is a daily activity, or teaching, which can involve classes that meet one or more times per week throughout the quarter, workshops meet much less frequently—only four to seven times over the course of a quarter. (Er. Ex. 12 at 2.) Workshop Coordinators

receive a nominal stipend each quarter, above and beyond the traditional PhD funding. (Niestat 93:7-20; Owens 1032:23-1033:3; Robertson 538:25-539:3; Vanderpoel 1475:15-1476:1; Korola 1376:9-12; Powell 2037:22-2038:3.) Acting as a Workshop Coordinator is entirely voluntarily and does not satisfy any academic requirement for the student. (Niestat 90:5-6; Robertson 538:10-12; Owens 1032:18-22; Korola 1380:3-13.) Moreover, Workshops Coordinators do not receive extensive pedagogical development or mentoring as TAs and Lab RAs do. (*Compare* Niestat 86:8-10, 86:21-87:1, 87:24-88:21 (discussing Handbook and orientation of Workshop Coordinators) *with* Robertson 514:24-516:7, 517:23-518:14 (interaction with TAs); Nirenberg 141:25-142:25, 143:18-144:20, 147:5-10, 148:11-149:3 (same).)

H. Teaching in Excess of the Academic Teaching Requirement Is Not Degree Related.

Students who teach in excess of their teaching requirement differ from those who teach to fulfill a teaching requirement. When a student teaches in excess of his or her academic requirement, he or she receives funding specifically for the teaching opportunity. (Robertson 560:20-561:1; Owens 1036:7-12; Wild 321:1-4; Prince 627:15-25.) Sometimes, these students apply for and accept Prize Lectureships, where they obtain funding to design and teach their own course. (Nirenberg 232:11-16; Hilal 1874:18-24, 1876:8-14.) Moreover, teaching in excess of the academic requirement is entirely voluntary. (Owens 1001:8-24 (discussing that Divinity discourages people from teaching beyond their requirements, demonstrating that doing so is voluntary); Hilal 1889:11-1890:3 (explaining that he sought the opportunities out for money, not a requirement); Nirenberg 224:25-225:15 (discussing the fact that teaching in excess requires approval, demonstrating that doing so is not required).)

Beyond this, students who teach in excess of their academic requirements do so for different reasons. For example, Anthropology PhD student Yaquv Hilal has sought out

numerous teaching opportunities beyond his requirements, including three courses he designed and taught himself and a preceptorship. (Hilal 1889:11-1890:3.) Mr. Hilal testified that he sought out each of these opportunities not to fulfill an academic requirement, but because he personally needed to earn money. (Hilal 1879:24-1880:2.)

Students teaching beyond their academic requirement are no longer exposed to close mentorship and guidance from faculty members nor are they generally required to participate in additional formal pedagogical courses or seminars. (Nirenberg 175:2-11; Prince 629:11-21; Hopkins 870:24-871:9.) Moreover, graduate students teaching to fulfill academic credit receive priority in course selection over students teaching in excess of their requirements who volunteer to TA the same course. (Wild 312:8-13; Robertson 535:5-10.)

ARGUMENT

A. The University of Chicago’s PhD Students Are Not Employees Under *Columbia*’s Common Law Agency Test.

In *Columbia*, the Board erroneously rested its decision on its misapplication of the common law definition of “employee,” which the Board wrote “generally requires that the employer have the right to control the employee’s work, and that the work be performed in exchange for compensation.” 364 NLRB No. 90, slip op. at 15. The Board wrongly determined that *Columbia*’s student assistants performed teaching and research services directed by the university in exchange for compensation, and, therefore, the students had a common-law employment relationship with their university. The Board compounded its error by noting that the facts in *Columbia* “d[id] not suggest a primarily educational relationship,” but rather one that had a “salient economic character.” *Id.* at 15-16.

Significantly, the *Columbia* Board limited its holding to the specific facts at that institution. As it said: “[w]e do not hold that the Board is required to find workers to be statutory employees whenever they are common-law employees, *but only that the Board may and should find here that student assistants are statutory employees.*” *Id.* at 4 (emphasis added). Indeed, the *Columbia* Board even envisioned circumstances where certain graduate students would not be employees. *Id.* at 17. Thus, the Board did not purport to make a finding regarding the status of student assistants at *all* private universities across the country. As such, its holding does not control this case, where the facts are markedly different because the facts at Chicago – at a minimum – suggest a primarily educational relationship.²¹

²¹ Although Chicago can establish that its facts are wholly distinguishable from *Columbia*, Chicago disagrees with the Board’s holding in *Columbia* for the reasons stated in Section iii., below (*see pp.* 83-87). *Columbia* represents an unwarranted departure from decades of firmly established Board law and has not yet withstood the test of judicial review. Chicago fully reserves its right to argue that *Columbia* was wrongly decided here and in any subsequent stages of this case.

Indeed, **unlike *Columbia***, the record here demonstrates that there is absolutely no “salient economic character” to the relationship between graduate student assistants and Chicago. The graduate assistants at Chicago are graduate students enrolled in courses of study leading to advanced academic or professional degrees. They take classes, are given examinations, and receive grades. They perform the independent research necessary to obtain a PhD in their respective fields. The students who teach or conduct research do so *exclusively* to fulfill their academic requirements and for their own benefit. The assistantships are not motivated by Chicago’s “business” considerations, but rather educational concerns. The tuition remission and the stipend package the students receive from Chicago support their overall academic education – that academic funding is not pay for a job.

As demonstrated by the record, the relationship between the students and Chicago is purely academic, driven by a goal to develop the next generation of scholars, academics and scientists who hold the highest educational degree in their field. **Unlike *Columbia***, there is no “payment of compensation, in conjunction with the employer’s control.” *Id.* at 6. As such, there is no common law employment relationship between the students and Chicago – even under the Board’s erroneous “common law” definition – and the petition must be dismissed because Chicago’s PhD graduate students simply are not statutory employees.

i. Chicago’s graduate student TAs are not employees under *Columbia*.

1. *Unlike in Columbia, teaching opportunities at Chicago are part of the academic curriculum, are accompanied by appropriate academic development opportunities, and are not intended as a benefit to the “business” of educating undergraduates.*

In *Columbia*, the Board found that the TAs were “thrust wholesale into many of the core duties of teaching,” suggesting that the purpose of students serving as TAs “extend[ed] beyond

the mere desire to help inculcate teaching skills.” 364 NLRB No. 90, slip op. at 16. The Board further found that “[t]he delegation of the task of instructing undergraduates, one of a university’s most important revenue-producing activities,” suggested that the student assistants’ relationship to the university had a “salient economic character.” *Id.*

Unlike in *Columbia*, however, because PhD graduate students are not “thrust” (*i.e.*, “push (something or someone) suddenly or violently”) “wholesale” (*i.e.*, “done on a large scale”)²² into teaching, there is not even the suggestion of a “salient economic character” to the relationship between Chicago and its TAs. Rather, the relationship is that of students in an academic institution, with teaching opportunities offered solely for the benefit of the graduate students’ education and career aspirations.

It is beyond dispute that students develop a wide range of teaching skills through the teaching assistantships, including conveying complex, technical information in a clear manner, developing methods of running a class discussion, and learning instruction in the design and development of syllabi, tests, and assignments. (*See, e.g.*, SOF at pp. 26-30.) Teaching also provides an opportunity for students to master the subject matter of a course, with which they have prior familiarity, in greater depth, thus solidifying the students’ understanding of the essential principles of their discipline. As Dr. Nirenberg explained, “pedagogy is very important. It’s very important to be able to teach and one of the reasons it’s very important is because you won’t get a chance to do research if you aren’t pedaggodged in the arts and sciences. That’s just the way the modern American University is.” (Nirenberg 162:9-14.) Furthermore, he elaborated:

²² *New Oxford American Dictionary* 1809, 1974 (Angus Stevenson & Christine A. Lindberg eds., 3d ed. 2010).

the whole reason why [Chicago] ha[s] pedagogical requirements in the Ph.D. and the Social Sciences is because teaching is such an important part of how the job market is going to look at you when you're done . . . It's because teaching is a skill you have to show you've had and you've acquired when you go into the job market, and to such a degree that we now, I think almost every graduate student who applies for a job in any field in the Social Sciences . . . – a professorial job – has to produce a teaching statement.

(Nirenberg 157:23-158:10.)

Because the pedagogical experience is so essential to graduate education, doctoral students in almost all of the programs must obtain a specified amount of pedagogical experience to obtain their doctoral degree. (Er. Ex. 15A; Nirenberg 136:16-137:4; Wild 321:11-15; Robertson 493:18-20; Hopkins 823:4-5, 871:18-20; Owens 1024:11-14; Prince 602:19-21, 638:2-6.) For instance, Departments in the Social Sciences Division require all students to accumulate five “teaching points.” (Er. Ex. 15A.) Departments in the Biological Sciences Division require all students to teach two courses or an equivalent. (Er. Ex. 15A.) Some Departments in the Humanities Division, including Romance Languages and Literatures and Slavic Languages and Literatures, require additional teaching points. (Er. Ex. 15A.) These additional point requirements reflect the Departments’ view that additional pedagogical experience is necessary to obtain the doctoral degree in those fields. (Wild 321:16-322:4; Robertson 494:23-495:8.) As established by the record, the teaching requirement at Chicago is an integral part of the academic curriculum offered by Chicago and is part and parcel of the students’ academic education.

The importance of the educational component in learning to teach is underscored by the wealth of resources, guidance, and mentoring made available to TAs. Far from being “thrust wholesale into” instructional duties, *Columbia*, 364 NLRB No. 90, slip op. at 16, Chicago’s TAs receive extensive pedagogical development, guidance and evaluation in advance of and during teaching, reinforcing the academic nature of pedagogy. The nature and degree of the

pedagogical programming and guidance negates any other purpose other than teaching PhD graduate students how to teach.

Many teaching students are trained through the CCT, which offers various programs, consultations and workshops to ensure that students get full pedagogical development. (SOF at p. 36; Wild 292:8-19.) CCT's pedagogy model mirrors the teaching experience at Chicago and develops programs, seminars and workshops to complement each of the five stages of the teaching process, as more fully described *supra* at pp. 36-37. (Rando 753:1-16.)

In addition to CCT programs, many departments, including Art History, English Language and Literature, Romance Languages and Literatures, Music and Chemistry, offer subject-matter pedagogical programs that students must take prior to teaching. (SOF at pp. 33-35.) The purpose of these programs is to ensure that students have a basic set of skills and knowledge **before** they teach a class, i.e., not being "thrust wholesale into" teaching.

Outside of these Programs, students' pedagogical development occurs primarily between the student assistants and the course instructors, who take an active role in that process. Faculty members meet regularly with the graduate assistants to review the course progression and discuss the teaching experience with the students. (SOF at pp. 26-30.) These close interactions frequently give rise to mentoring relationships with experienced faculty members who provide guidance on pedagogical techniques and other issues as students develop teaching skills. These relationships represent an invaluable aspect of the student's education and future professional success.

Petitioner's own witness, Dr. Kenneth Warren, testified that he extensively mentors his TAs. For instance, he provides them with an opportunity to guest lecture and provides feedback after the guest lecture. (Warren 1959:15-1960:6 ("I would ask them how they thought it went,

get their sense of things and then I would point out what I thought were strengths and weaknesses in the preparation, the content and the delivery [of their lecture]”). He also engages in a collaborative process with his TAs to develop paper topics and quizzes for his courses.

(Warren 1954:11-23, 1957:1-3.) Dr. Warren further testified that:

[B]eyond the coursework that they do it’s – mentoring typically occurs in an office hour setting, informal conversations about their, you know – so at the beginning the defining of their particular field, moving towards their field exams, giving them feedback on any of the substantial papers that they do in their early work, helping them as they move towards writing a proposal for a – their dissertation and then giving them feedback on the chapters as they are writing the dissertation.

(Warren 1961:13-23.) Dr. Warren explained that mentoring is essential “because the process of becoming an effective professional in the fields in which we work require mentoring up and down the ladder.” (Warren 1964:6-8.)

Dr. Prince testified that she spends substantial time with her TAs. (SOF at p. 26.) For instance, she explains various teaching methods, discusses the difficulties TAs may encounter, encourages them to practice addressing these difficulties during the discussion, and trains them to lead small discussion groups. (SOF at p. 26.) At the beginning of the course, she attends discussion sections to observe how her TAs are handling the discussion. (Prince 616:6-10.) She later provides them with feedback on their performance. (*Id.*)

Similarly, Dr. Wild meets with his TAs to put together materials that will assist them in guest lecturing his course. (Wild 305:4-7.) He then discusses the readings with the PhD graduate students and helps them with the lesson plan for their guest lecture. (Wild 305:7-9.) After a PhD graduate student guest lectures in Dr. Wild’s class, he provides them with feedback on their performance. (Wild 307:1-6.)

Dr. Robertson meets with her TAs weekly to discuss the course readings. (Robertson 514:24-516:7.) She asks her TAs to create exam questions and potential paper topics that she

then reviews and critiques. (*Id.*) Dr. Robertson also teaches her TAs how to grade papers, and discusses the etiquette of holding office hours. (*Id.*) She allows each of her TAs to give a standalone guest lecture during the quarter. (Robertson 517:23-25.) She prepares the student for the guest lecture, observes the guest lecture, and then provides feedback on the student's performance. (Robertson 517:25-518:14.)

Dr. Nirenberg and Dr. Hopkins similarly testified that they mentor and train their TAs. (SOF at pp. 28-29.)

As demonstrated by the record, TAs at Chicago are **unlike the “thrust wholesale into” student assistants found by the *Columbia* Board** because at Chicago they receive extensive education, guidance, teaching and mentoring to support them in developing their pedagogy skills. As Dr. Nirenberg described it, “far from thrusting students wholesale into any teaching context, that’s what we would avoid. Abhor.” (Nirenberg 156:1-3.) Indeed, the substantial and time-consuming pedagogical development programs and mentoring of PhD graduate students established in this record involves a considerable expenditure of resources for which Chicago receives no financial return.

Unlike the “salient economic character” of the relationship at *Columbia*, having a TA does not reduce the faculty member's workload as the faculty spends time teaching and instructing the TA on, for example, how to grade papers, how to lead discussion groups and hold office hours. Dr. Wild testified that that “on balance, actually setting up a class with TAs is more work than a class without TAs” because supervising and mentoring the students requires more planning, time and effort. (Wild 308:12-21, 429:12-430:6.) Similarly, Dr. Robertson testified that she “work[s] more when [she] ha[s] TAs” because she “spend[s] a lot of time mentoring them and helping them to become good teachers.” (Robertson 520:9-13.) Dr.

Nirenberg also testified that having TAs grade the papers and exams is not a “relief” and “doesn’t help the faculty member because it’s more work to make sure that the -- that your collaborator knows what -- what you think as the person in charge of the class is important and is grading in a way that is consistent and reflects what you’re trying to communicate.” (Nirenberg 202:23-203:7.) He undertakes this “large amount of effort” because it is his responsibility to teach his TAs how to teach. (Nirenberg 203:4-5, 146:21-147:1.)

Chicago’s unparalleled emphasis on education and development of pedagogical skills, coupled with the various departmental requirements for teaching, contrasts sharply with the “salient economic character” of the relationship between instructional fellows and their university in *Columbia*. There are simply no facts to support a finding that Chicago’s TAs have an economic relationship with Chicago. Rather, the purpose and character of the relationship is *exclusively* educational.²³

- a. *Because Chicago is primarily a research institution, its PhD students have fewer teaching requirements.*

Doctoral programs at Chicago use a number of means to develop graduate students into scholars with the requisite research and training skills. Classes and seminars provide students with broad foundational knowledge and familiarity with the topics in their field. The dissertation

²³ Petitioner attempts to create a series of “gotcha” moments by introducing a host of irrelevant documents into the record solely because they relate to assistantships and occasionally use terms like “employee” or “salary.” Irrespective of the fact that no witness testified about these documents or “connected” them as required by the NLRB Casehandling Manual Sec. 11224.1, the Board has plainly rejected the argument that semantics are significant to determine employee status. In *Leland Stanford Junior University*, for instance, in holding that research assistants were not employees covered by the Act, the Board gave no weight to the union’s argument that the research assistants were described as “employees” and their stipends were referred to as “salary” in the university’s systems. 214 NLRB 621, 622 n.5 (1974) (“The use of the terms ‘employees’ and ‘salary’ in Stanford’s classification and payroll system is not conclusive on the Board.”), *holding overruled by Columbia University*, 364 NLRB No. 90 (2016).

To the extent descriptive language is relevant, there are just as many documents that refer to graduate assistantship stipends as financial aid, including Petitioner’s Exhibits 22, 27, 38, 40, 45, 100, and 109. In addition, students awarded assistantships and other forms of financial aid must be enrolled as students – not employees – to receive these awards.

In any event, if certain words in documents that were admitted without a witness were used to decide the outcome of this case, the most relevant predominant words used therein are: “PhD graduate *students*.”

requirement provides the opportunity to engage in original research under the guidance of experienced scholars. Graduate assistantships provide opportunities to acquire teaching, research and other skills, also under the guidance of experienced faculty members.

Because Chicago is first and foremost a research institution, (Nirenberg 126:23-127:4; Amit 1286:7-13; Hirschfeldt 1344:9-10), its primary focus – “more than any of [its] peers” -- is “just on producing researchers.” (Nirenberg 126:23-127:4; *see* 162:15-18 (“[R]esearch is why you’re at the University of Chicago, so we need you to teach you to teach, but we cannot let you think that that’s why – that’s the principal reason you’re here.”), 167:10-14 ([P]edagogical training is important, and we want you to get the pedagogical training you need, but you don’t want it to interfere with the research, which is the reason for the season.”).)

Because of Chicago’s research focus, in the Divisions and Schools (outside of the sciences), most PhD students in the GAI are required to acquire only five teaching points during their tenure in order to graduate. This typically amounts to several quarters of course monitoring and one quarter in which the student gets experience creating and teaching his or her own course.

Some of the Programs in PSD have no teaching requirement at all. (Er. Ex. 15A.) Almost all the other Programs in BSD and PSD require students to teach only two courses or only half a year to graduate. (Er. Ex. 15A.) In BSD, students may enroll in a classroom-based Training Course instead of one of the teaching requirements. (Er. Ex. 15A n.1; Prince 604:5-605:3.) Students in BSD and in the Astronomy and Astrophysics Program in the Physical Sciences Division may also substitute one of the teaching requirements with an equivalent activity, including for other institutions, such as teaching at a local high school, teaching “Boot Camp” to incoming PhD graduate students, or doing outreach work for the Kavli Institute for Cosmological Physics. (Prince 605:4-20; Er. Ex. 15A, n.1; Er. Ex. 15A, n.4; Swanson 1077:23-

1078:1.) In either of these cases, students who select one of these two alternatives demonstrate that Chicago's intention is *not* to create a "labor pool" to teach undergraduate classes but to ensure that pedagogical training is a part of the PhD.

At the hearing, Petitioner focused on three Programs that require students to have additional teaching experiences to receive their funding. Given that there are more than 60 PhD programs at Chicago, Petitioner's limited, cherry-picked focus must be evaluated based on predominant characteristics at Chicago, rather than three atypical examples in a decentralized structure.

The justification to look at predominant characteristics to determine the employee status of a large group of individuals with diverse experiences was articulated in *North American Van Lines*, 288 NLRB 38 (1988), *rev'd on other grounds*, 869 F.2d 596 (D.C. Cir. 1989). There, the Board affirmed the ALJ's holding that a group of truck drivers (called owner-operators) were predominantly employees under the Act and not independent contractors, notwithstanding individual situations within the group for whom a different result would obtain. In reaching this conclusion, the ALJ reasoned:

The record will be discussed in terms of predominant or significant occurrences; however it is recognized that these conclusions are not descriptions of absolutes. Thus, it is acknowledged that the record may contain exceptions or examples of conflicting occurrences that tend to indicate that there are some fleet operators of individual owner-operators who, by virtue of their relative financial independence or other entrepreneurial factors, may have developed and maintained an independence untypical of the vast majority of Respondent's mainstream drivers. Accordingly, the following evidentiary descriptions are directed at the predominant management-driver relationship and are not intended to preclude recognition of some individual situations that could show a true independent status for some owner-operators.

Id. at 42-43.

Applying that reasoning here, it is important to appreciate that students who are required to teach additional courses as part of their pedagogical experience in those specific fields and to

receive funding – in only three out of sixty-plus programs – are outliers. The overwhelming and predominant majority of doctoral students are required to acquire only the minimum number of the academic teaching requirements of their Division/Department/Program.

Furthermore, Chicago takes measures to ensure that teaching does not interfere with student research. The Departments/Programs limit the time students are permitted to spend teaching each week. In Social Sciences, for instance, the Departments/Programs impose a limit on how many teaching assignments a doctoral student may accept in any year. (Nirenberg 161:10-12.) Additionally, there is “a total limitation on how many hours [a doctoral student] can spend on any activity other than [their] research, which is 20 hours.” (Nirenberg 161:14-17; Robertson 505:22-506:2; Pet. Ex. 2.)²⁴ Moreover, many Divisions/Schools and Departments/Programs within the Divisions/Schools have issued guidance on how much time should be spent per week on a given teaching opportunity. (*See, e.g.*, Er. Ex. 25; Robertson 506:23-507:1; Nirenberg 161:7-9.)

b. *Chicago’s quarter system also reduces the time spent being a TA.*

Unlike its peer institutions, Chicago operates on a quarter system. (Niestat 62:15-17.) Each quarter is approximately ten or eleven weeks. (Niestat 62:18-19.) This means that teaching responsibilities for each course are less time consuming than colleges and universities that operate on a semester system, which is typically fifteen weeks. A student in BSD, for instance, would only be required to teach for approximately twenty to twenty-two weeks, a small fraction of the approximately 5-8 years it takes to get a doctoral degree in BSD.

²⁴ To the extent Petitioner’s Exhibit 2 uses terms like “work,” as discussed *supra* at p. 40 n.15, it is commonplace for employment-related words to be used in academia as an imperfect shorthand to describe concepts that are totally unrelated to employment.

2. *Whatever benefit there is to Chicago and its faculty in fulfilling Chicago's mission to teach its PhD students to teach and conduct research is an unintended consequence that does not negate Chicago's exclusive reason for teaching its PhD Students.*

As established by the record, the teaching done and research conducted by the graduate assistants are the same teaching, research and other activities in which graduate students need to engage to develop as scholars and prepare for professional careers. Although there may be extrinsic consequences of experiential learning that Petitioner chooses to emphasize, Chicago's exclusive focus is on the education and development of its doctoral students. The intended beneficiaries are the doctoral students who are being trained to become future faculty. Any benefits that might be gained by others are not by design.

By Petitioner's focus throughout the hearing on the narrow question of whether the undergraduates receive a benefit, or whether the faculty members receive a benefit, the Petitioner misses the larger picture of graduate education at Chicago. Chicago considers itself the "teacher of teachers" (Nirenberg 127:4) and its mission is to produce future academics and independent researchers. Indeed, Dr. Nirenberg explained that for each graduate course offered, Chicago foregoes the revenue it could receive from offering Master's or undergraduate level courses:

So, undergraduates and Master's students are tuition paying students. In Ph.D. we are supporting the student. And so when we offer these graduate classes, we are deliberately opting not to offer an undergraduate class. Of course I could put a price very easily on what the foregone cost of what those undergraduate classes is. That's what makes us a research university.

A research university is a university that's willing to take resources that are – that could otherwise be productively employed in a different activity, like teaching undergraduates, often a revenue producing activity, and dedicating it into basic research which is otherwise not sustainable. And the cost of that is enormous.

(Nirenberg 131:23-132:10.)

Furthermore, the monetary value of full tuition, the stipend and the funding package received by PhD graduate students exceeds, by a significant margin, the replacement cost of the assistance provided by the doctoral students. For instance, Dr. Robertson testified that the total anticipated stipend and the tuition of PhD students in the Humanities Division is almost \$400,000. (Robertson 489:5-9.) Dr. Owens testified that the total cost of tuition and stipend that Chicago provides to PhD students in the Divinity School is about \$375,000. (Owens 990:5-11.) If Chicago sought to minimize its expenses, it could save substantially by hiring postdoctoral students who have already received their PhD training and degrees to teach the undergraduates, grade the papers, hold office hours and conduct research. Chicago chooses to offer assistantships to its doctoral students despite the cost and effort, precisely because of its commitment to train the best academics and researchers.

3. *PhD graduate student teaching opportunities at Chicago are not driven by undergraduate course requirements or enrollment, as PhD graduate students invariably teach courses that are related to their course of study.*

Unlike the Board's view in *Columbia*, the teaching assistantships at Chicago are aimed solely to train PhD graduate students how to teach, and are offered solely for the benefit of the graduate students. The PhD graduate students are not merely a "labor pool" available to teach courses to undergraduates. To the contrary, *all* academically required teaching experiences that PhD students receive in the course of their studies are related to their academic pursuits and career development.

There was extensive testimony about the matching process, through which doctoral students are paired with opportunities that best support their academic development. (SOF at pp.

23-24.)²⁵ Although the process by which students are matched with various teaching opportunities varies widely by Division/School and even within Divisions/Schools, faculty members and administrators take great care to ensure that PhD students who have a Teaching Assistantship do so in classes that align with the students' field of study and present them with the opportunity to practice teaching within their chosen discipline's pedagogy. (Wild 392:7-8 ("They teach exactly in the languages of their specialization"); Robertson 508:5-6 ("Students are matched to courses in which they have expertise"); Robertson 508:23-509:15 ("It's very, very rare if at all" for a PhD graduate student to have a TA opportunity outside of their own department but still within the Humanities Division "to assure that the student is learning to teach in the field in which they are training and to compliment [sic] the training, the research training that they are doing").) In the instances when a student teaches outside his or her Department/Program, it is at the choice of the student, not at the instigation of Chicago.

The number of graduate assistant positions in a particular department is not based on the undergraduate teaching needs of that department. Indeed, in some cases, doctoral students can fulfill the teaching requirement without ever teaching any undergraduates. Specifically, Chicago allows some of its PhD students to earn teaching credits by teaching outside of Chicago at places like museums or other colleges. (*See, e.g.*, Er. Ex. 15A n.1, n.4; Owens 1003:15-1004:7, 1005:6-23.) They may also study pedagogy instead of teaching. (Er. Ex. 15A n.1.)

²⁵ One of Petitioner's witnesses, William Kong, tried to portray his teaching assistantships as assignments. He conceded, however, that the faculty member for his teaching assistantship was his own research advisor, thus, making apparent the reason for a perfect match of student with his own interest. (Kong 1123:19-1124:1, 1139:24-1140:4.)

Moreover, Petitioner's documents that were admitted into evidence over Chicago's relevance objection, to the extent they purport to portray the assistantships as "assignments," are inconsistent with the extensive testimony regarding the matching process. (*See, e.g.*, Pet. Ex. 112.) Because Petitioner failed to introduce any witness to rebut the matching process testimony or to testify about these documents, these documents are irrelevant and cannot be given any weight, particularly with respect to any imperfect shorthand euphemisms that they may contain.

Additionally, and contrary to Petitioner’s “labor pool” theory, the record establishes that some PhD students are given teaching opportunities to fulfill their degree requirements in graduate level courses because there is no undergraduate enrollment. (Owens 1002:3-22, 1014:25-1015:11; Vanderpoel 1465:10-16.)

These facts are far different than those the Board found in *Columbia*, where it relied heavily on the fact that teaching opportunities for graduate students were allegedly geared toward fulfillment of Columbia’s instructional needs for the undergraduate student body. *Columbia*, 364 NLRB No. 90, slip. op. at 15. The teaching opportunities for PhD students at Chicago are designed exclusively to train PhD students how to teach, in furtherance of their educational and future career objectives.²⁶

4. *TAs are not removed from their positions, even if they are struggling or inadequate; therefore, they are not under Chicago’s “control.”*

A materially different relationship exists between Chicago faculty and TAs than what the Board described in *Columbia*. There, the Board found that the university maintained “control” over the work of TAs based on evidence “that teaching assistants who do not adequately perform their duties to the University’s satisfaction are subject to corrective counseling or removal.” 364 NLRB No. 90, slip op. at 15. In contrast, TAs at Chicago are never disciplined or removed from their positions even if their performance is inadequate. (Nirenberg 172:13-19; Robertson 511:23-512:2; Wild 338:24-25; Owens 1016:13-15; Prince 632:6-8.) Instead, Chicago simply continues to mentor and train graduate students until they improve their teaching skills.

²⁶ This is in marked contrast to a “thrust wholesale into” situation, which distinguishes Chicago’s Core program from the Board’s description of the role of TAs in *Columbia*.

(Nirenberg 256:2-16; Robertson 511:5-7; Wild 336:19-337:8; Hopkins 869:7-16; Owens 1016:10-12; Prince 631:15-19.)²⁷

As the exclusive purpose of being a TA is for PhD graduate students to learn how to teach, removing a struggling TA from teaching would disserve that objective. The undisputed fact that Chicago's TAs are not subject to removal even when they are less than satisfactory demonstrates that Chicago does not exercise "control" over TAs in the manner contemplated by the *Columbia* Board's common law test. Quite importantly, and unlike *Columbia*, no contrary evidence was -- or could be -- introduced by Petitioner.

5. *Unlike in Columbia, PhD students at Chicago receive their full stipends even when they cannot be a TA and, therefore, are not exchanging services for compensation.*

The Board in *Columbia* held that the instructional fellows there received compensation in exchange for "instructional services." In reaching that conclusion, the Board relied on the fact that "[r]eceipt of a full financial award is conditioned upon their performance of teaching duties," and that "[w]hen they do not perform their assigned instructional duties, the record indicates they will not be paid." 364 NLRB No. 90, slip op. at 15. The Board found that this "explicit conditioning of awards on performance of teaching duties, demonstrates that the University offers student assistants stipends as consideration for fulfilling their duties to perform instructional services on the University's behalf." *Id.* This is not the case at Chicago where the

²⁷ The one instance when a BSD student had to retake the teaching assistantship was an issue of non-performance (*i.e.*, sleeping during the lecture), rather than inadequate performance. (Prince 632:16-633:9.) In any event, the student's stipend was not discontinued, and he still received tuition remission for that quarter. (Prince 632:9-11.) Similarly, when Dr. Wild's student "froze up" and, despite additional training and mentoring, "it didn't make sense to have [that] student in the classroom," the student was allowed to continue his studies without completing the teaching requirement. (Wild 418:4-24, *see also* Wild 400:5-18.) There is nothing in the record to suggest an element of "control" because the student either lost his stipend or his stipend was jeopardized.

only condition placed on the receipt of PhD funding is a student's satisfactory academic progress toward his or her PhD degree. (*See, e.g.*, Pet. Ex. 74 at 2, 3; Pet. Ex. 98.)

In some cases, a portion of the stipend provided to each student is earmarked for teaching opportunities to comply with federal tax law.²⁸ (Nirenberg 159:23-160:6, 160:24-161:1; Wild 435:3-10; Robertson 542:6-22.) The amount of the stipend is reduced and then distributed to the student throughout the quarter, less the applicable tax withholdings. (Owens 991:20-992:6; Er. Ex. 45.) Nevertheless, so long as the student meets his or her academic requirements, the student will receive the total amount of the funding. (*See, e.g.*, Pet. Ex. 74 at 2, 3; Pet. Ex. 98; Nirenberg 164:6-11 (“That’s what the stipend is for. It’s to enable you to do your dissertation and do research, and the teaching is something that is important that we need to equip you with, but the stipend is for doing what you can do only at the University of Chicago”).) Indeed, even Petitioner’s own witness, Danya Lagos, admitted that although a portion of her stipend was paid out at a different time when she was teaching, she did receive the full stipend she was promised. (Lagos 1713:7-19.)

²⁸ This particular tax treatment of stipends does not support deeming these amounts as “compensation for services” instead of “financial aid” because the test used by the Internal Revenue Service to determine employee status is broader and more inclusive than the one used by the NLRB. *See Independent Contractor (Self-Employed) or Employee?*, U.S. DEP’T OF TREASURY, I.R.S., <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-Self-Employed-or-Employee> (last updated Apr. 18, 2017). Indeed, if tax treatment were outcome-determinative, students like Shane DuBay would not be considered employees because his stipend when he teaches is not subject to state and federal withholdings, nor does he receive a W-2 Form. (SOF p. 52 n. 20.) Tax treatment is irrelevant to NLRA employee status, and should not be given any weight.

Beyond this, the fact that Shane DuBay’s stipend is not subject to state and federal withholdings when he was a TA demonstrates yet another reason why Petitioner’s documents that were admitted without a witness – specifically those documents that state that taxes should be withheld – should be given no evidentiary weight. Because those documents are inconsistent with Mr. DuBay’s actual practice, one cannot draw any admissible, credible conclusions from them.

ii. Lab Research Assistants are not employees under *Columbia*.

- 1. Research Assistants are not subject to Chicago's control because they choose their own areas of research.*

The Board in *Columbia* found that Columbia exercised the requisite control over research assistants to render them statutory employees because, although funded under the terms of a research grant, the research assistants were not “permitted to simply pursue their educational goals at their own discretion, subject only to the general requirement that they make academic progress.” 364 NLRB No. 90, slip op. at 18. At Chicago, however, from the moment PhD students start their program, their activities as Research Assistants and their academic progress towards their degree are completely aligned.

At Chicago, the grant does *not* limit the students’ ability to “pursue their educational goals at their own discretion.” *Contrast Columbia*, 364 NLRB No. 90, slip op. at 18. Rather, that discretion is exercised **by the students**. The **students** choose their research topic very early, often before they affiliate with a laboratory, while they are still taking classes and are on Departmental or Divisional funding.

Although the matching process varies by Division and Department, graduate students generally select laboratories due to a shared interest in the professor’s area of specialty and the projects the professor is working on. (*See, e.g., Hopkins 872:25-873:2; Prince 666:17-19.*) Mr. Phillips, for instance, testified that he chose the lab of Dr. Bozhi Tian because he enjoyed the research he had conducted in Dr. Tian’s lab the summer before his first year as a doctoral student, and felt that it aligned with his research interests. (Phillips 1923:6-15.)

2. *Research Assistants do not perform services for compensation because they do not perform “defined tasks” as a condition of grant aid.*

In *Columbia*, the Board found that research assistants there were sufficiently subject to Columbia’s direction and control to meet the common law definition of “employee” because students had to “fulfill[] the duties defined in the grant” and, therefore, “performance of defined tasks [was] a condition of the grant aid.” 364 NLRB No. 90, slip op. at 18.

While that is not the case at Chicago, what is of greater significance here is that the Board in *Columbia* hypothesized that there are certain circumstances where research assistants would not be considered employees. Specifically, the Board stated that “[i]t is theoretically possible that funders may wish to further a student’s education by effectively giving the student unconditional scholarship aid, and allowing the student to pursue educational goals without regard to achieving any of the funder’s own particular research goals.” *Id.* at 17. It is this exact hypothetical that the Board found distinguishable from the facts in *Columbia* – this “theoretical[] possib[ility]” – that is the reality at Chicago. **Unlike in *Columbia***, graduate students at Chicago conduct research exclusively for their own dissertation – and nothing else!

As demonstrated by the record, the laboratory research performed by Chicago’s PhD graduate students as Research Assistants is entirely subsumed by their doctoral work. This is the same research they would perform as part of their dissertation research regardless of the source of funding. Their duties are not specified in any grant or any financial arrangement. The only “deliverable” is the education of the PhD graduate student.²⁹

²⁹ Neither the grant proposals in the record (Pet. Exs. 121 and 122) nor any testimony shows any specific duties of Research Assistants outside their research or their own dissertation, or any relationship between Research Assistantships and the grants or their financial aid packages. Therefore, to the extent Petitioner will rely on grant proposals or other documents introduced without a witness, no weight should be given to these documents because they are irrelevant and inconsistent with the testimony introduced at the hearing. *See supra*, at p. 7.

Petitioner's witnesses confirmed that when they conduct research in a lab, they are doing research *exclusively* in connection with their dissertations. (Ahsan 1658:22-25; Phillips 1913:7-1914:1, 1921:21-24, 1923:25-1924:7.) While the student's research often aligns with the interests of his or her faculty advisor, the research a student does is always in furtherance of his or her dissertation topic. (Ahsan 1664:24-1665:6 ("Q. With respect to the research you do in the lab, does anyone prescribe what your duties are? A. Well, Dr. Prince and I have a running list of experiments I need to complete before we submit my manuscript for publication, so what's prescribed for me are things that Dr. Prince and I have decided that are critical for my dissertation research"); Hopkins 876:20-877:13, 883:1-5; Prince 668:20-669:1, 673:5-9.)

Indeed, for this reason, the Divisions do not limit the number of hours a student can research in a lab in any given week, nor track the number of hours students spend in the lab. (Hopkins 888:13-15; Prince 677:16-18.) Chicago believes that it cannot expect students to be successful in conducting their research if their hours are arbitrarily limited. (Prince 677:19-25.) Graduate students make their own schedule and decide what tasks they are going to be working on in a given week. (Ahsan 1664:24-1665:20; Phillips 1915:15-1917:2; Prince 678:19-22.)

In the antithesis of "control," a student's funding is not affected by the time s/he spends in the lab. (Hopkins 888:16-18; Prince 678:4-7.) Funding is not increased for spending more time in the lab. (Hopkins 888:19-21; Prince 678:8-11.) The only benefit of spending more time in the lab is to the PhD student, who may make better and faster progress toward completing his or her dissertation research. (Hopkins 889:2-4; Prince 678:15-18.) But ultimately, it is always the student's choice how much time he or she spends in the lab. (Hopkins 889:5-8; Prince 678:19-22.)

3. *Research Assistants are not exchanging services for compensation because they are guaranteed funding even if their area of interest is not covered by a research grant.*

The record establishes that receipt of a full financial award is not conditioned upon a student's performance of specific research duties. **Unlike in *Columbia***, full funding is maintained even for students whose research is not covered by a research grant. As Dr. Prince testified:

Within the domain of zebrafish biology, I have certain interests which it's likely the student would wish to also pursue because that is why they selected my lab, but on occasion students have shared with me related but different interests which have led to entire new research programs within my lab. These are cases where the students' interest and creatively have helped to drive new research directions which I personally find very exciting.

(Prince 669:4-13.) She explained that the students receive full funding because “[m]ost labs have some funds available which are not tied to a specific project, and many early stage students are being, in part, supported through our federal training grants.” (Prince 669:17-20.) She also added that she has “written grants to then support the research endeavors that a student has begun in my lab, and that has actually been very successful for my lab.” (Prince 669:25-670:3; *see* Prince 684:5-11 (“[L]oss of funding by a PI would not be a reason for a student to need to transfer out of that lab. The [D]ivision will ensure that the student stipend is covered and the [D]epartments provide bridge funding to cover the cost of experiments while the PI writes new grants to attempt to resolve the lack of funding”).)

Petitioner's witness, Kamil Ahsan, testified that “once [he] entered Dr. Prince's lab and presented [his] thesis proposal, [he] changed the lab's research direction as well to an area which [he] felt, and this was a decision made collaboratively with Dr. Prince, that [he] felt would suit [him], the lab and [his] advisor best.” (Ahsan 1394:9-14.) In other words, he introduced a whole

new area of interest, and he continued to receive full funding, even in the absence of a research grant.

At the hearing, Petitioner's questioning of Dr. Prince and Dr. Hopkins suggests that Petitioner has put the proverbial cart before the horse. Apparently, Petitioner will contend that the students' research ("work") leads to papers on which faculty are listed as authors and papers are listed on grant proposals that generate income for Chicago. (Hopkins 972:5-14.) Petitioner, however, has it backwards. As Dr. Prince explained, the whole reason for obtaining the grants is to support the free education of PhD graduate students and not the other way around:

A: A lot of the experimentation we do is quite expensive. We have to purchase reagents [chemicals used in experiments] or cover the cost of using core facilities on campus such as the high-end imaging facility or the sequencing facility. Therefore, **it's my role to bring resources in the form of either external grant funding from various agencies**, including NIH or NSF, or internal funding from the division into my laboratory **to ensure that my students can continue to do their experiments and further their education.**

Q: So if I understood what you just said, you take time out of your own research to apply for grants, to get money so that your PhD students have the equipment necessary to do their research?

A. It's primarily the reagents necessary, the renewable resources, that are expensive. Yes, I spend significant time writing grant proposals to attract resources into the laboratory to enable the research to continue.

(Prince 653:13-23, 654:10-18, 735:6-12 (emphasis added).)

In a similar vein, Petitioner also misses the mark when it points to documents relating to intellectual property to concoct a theory that by virtue of those documents, student research is for the benefit of Chicago and not for the benefit of the student. (*See* Pet. Ex. 37.) Here is why Petitioner is off base: the issue of whether a patentable invention or software that can be copyrighted is owned by its inventor (whether student or employee) or Chicago is based upon

interpretation of the patent or copyright laws. In general, inventions are owned by the inventor, whether student or employee, absent an assignment of rights. These exhibits merely reflect such an assignment required by Chicago where its facilities or funds are involved in the invention. Petitioner Exhibit 37 says that if an invention “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.) Note that this exhibit also provides “Guidelines” extending this principle to students as well as employees or researchers. It says nothing about student versus employee status at all, as it applies to students, employees, researchers and faculty members equally.

4. Research Assistants receive extensive training and mentorship from Chicago.

Because of their mutual academic interests, Research Assistants are particularly effective in the development of close relationships with faculty members. In most cases, the faculty members with whom graduate students conduct research as Research Assistants are their dissertation advisors. (Hopkins 888:3-6.)

Research Assistants meet with their faculty advisors weekly to discuss their research projects. (Hopkins 892:12-19; Prince 641:22-24; Phillips 1914:6-8; Ahsan 1399:8-10, 1662:14-1663:1.) During these meetings, the advisor and the student discuss the student’s research and work together to develop an experimental plan that will test the student’s hypotheses. (Prince 641:24-642:3; Hopkins 885:5-11, 886:5-17; Phillips 1914:14-19; Ahsan 1663:2-13.) One key aspect for the development of an experimental plan is to teach students to establish testable hypotheses and create experiments to test those hypotheses. (Prince 644:2-12.) Dr. Hopkins testified that he works with his graduate students to sketch out the first few experiments to test

their hypothesis. (Hopkins 886:5-17.) He explained that a common issue for graduate students is that they do not design experiments narrowly enough to test their hypothesis. (Hopkins 891:20-892:7.) Dr. Hopkins teaches his graduate students to avoid these problems. (Hopkins 892:8-25.)

With respect to mentoring related to written materials, research advisors teach their students how to develop publishable proposals and manuscripts. (Prince 645:10-646:7.) Sometimes, this mentoring includes the research advisor reviewing PhD graduate student drafts of dissertation proposals, fellowship proposals or manuscripts and providing feedback on those drafts. (Prince 645:22-646:4.) Dr. Prince explained that it is imperative to the student's development as an independent scientist that a student learns to write in the scientific format. (Prince 645:10-20.)

In the lab, the research advisors teach their graduate students to use complex equipment to conduct their dissertation research. (Prince 650:8-651:2.) As Dr. Prince explained, some of the equipment and research methods are nearly impossible to learn without the expertise of the research advisor. (Prince 650:21-23.)

Advisors also help their graduate students develop and improve their communication skills. (Prince 640:23-641:2.) Dr. Prince does so by asking her students to present an update of their research to the rest of the lab. (Prince 651:22-652:16.) Following the presentation, the student receives feedback from other people in the lab and from Dr. Prince. (Prince 652:6-9.)

Research advisors also teach their students to troubleshoot difficulties that arise during research as a result of the "fairly high failure rate" that occurs "for any researcher, including me [Dr. Prince]." (Prince 655:10-23; *see also* Hopkins 892:8-25.) Research advisors have significant experience conducting research, and as such, are capable of troubleshooting issues

that arise during research. (Prince 655:18-23.) Research advisors teach their graduate students to overcome these issues. Dr. Prince testified that she sits down with her graduate students and walks through their lab notebooks to try to determine where a problem occurred. (Prince 656:6-24.) She then suggests ways for the students to improve their experiment the next time around. (*Id.*)

As demonstrated by the record, through their collaborations together, Research Assistants and their faculty advisors often establish mentor-mentee relationships that are important to the student in securing academic positions after graduation.

iii. The *Columbia* test of employee status is erroneous and must be reversed.

Chicago maintains not only that its Graduate Assistants are distinguishable from their counterparts in *Columbia*, because Chicago's students are students, but also that the Board's decision in that case was clearly erroneous and must be overruled. In holding that students who conduct teaching and research at a university are statutory employees under Section 2(3) of the Act, the Board in *Columbia* improperly rested its decision on its version of the common law definition of "employee" and rejected the relevance of the primary educational relationship existing between students and the university, as well as the significant prudential policy considerations that weigh heavily against the intrusion of collective bargaining into that relationship.

For forty out of the last forty-four years, these considerations led the Board properly to exclude graduate teaching and research assistants from the Act's coverage.³⁰ In *Columbia*, the

³⁰ See *Adelphi University*, 195 NLRB 639, 640 (1972) (excluding graduate students serving as teaching and research assistants from a unit of full-time faculty members because they were "primarily students" who were "working toward their own advanced academic degrees"); *Leland Stanford Junior University*, 214 NLRB 621, 623 (1974) (holding that physics research assistants who performed various research tasks both independently and under faculty supervision, and who received financial aid in the form of a living allowance, were "primarily students" and "not employees" within the meaning of the Act), *holding overruled by Columbia University*, 364 NLRB No. 90 (2016);

Board failed to identify any significant changed circumstances to support its complete reversal of that position. The *Columbia* decision furthers no legitimate purpose of national labor policy, while threatening serious harm to graduate education at private universities across the United States.

Although Chicago recognizes that the Regional Director may be bound to follow *Columbia* in this case until that decision is overruled by the Board, Chicago preserves its right to argue here, on appeal and in any related proceedings that *Columbia* was wrongly decided. In furtherance of that objective, Chicago emphasizes the following for the record.

The Board historically has recognized that imposing collective bargaining on an educational relationship would be both unwarranted and inappropriate. As articulated in *Brown University*, the Board recognized that the nature of the relationship between the students and the university is “primarily an educational one, rather than an economic one.” 342 NLRB 483, 489 (2004). In support of that well-reasoned conclusion, the Board cited the following facts:

- Graduate assistants are admitted into the university as students, not hired as employees;
- Graduate assistants must be students actively enrolled in the university to receive an instructional or research appointment;
- Graduate assistants focus principally on obtaining a degree, *i.e.*, being a student, and service time is capped so as not to interfere with their studies;
- Teaching is an important component of most Ph.D. programs, and is often required as a condition to receive the Ph.D. degree;
- Graduate assistant positions, whether in teaching or research, are directly related to the core elements of the Ph.D. degree and the student’s educational objectives;
- Graduate assistants perform their service under the direction and control of department faculty members, who typically also act as the students’ advisors;

Brown University, 342 NLRB 483 (2004) (holding that teaching and research assistants were “primarily students,” not statutory employees), *holding overruled by Columbia University*, 364 NLRB No. 90 (2016).

- The university provides financial support only to students, and only for the period during which the students are enrolled;
- Graduate students without teaching or research appointments receive the same financial aid as students appointed to instructional and research assistantships; and,
- The vast majority of doctoral students receive financial aid.

Brown, 342 NLRB at 485, 488-89. Thus, the NLRB concluded that treating graduate student assistants as employees would be incompatible with the purposes of the Act. *Id.* at 488-90.

Indeed, the Board opined that “there is a significant risk, and indeed a strong likelihood, that the collective-bargaining process will be detrimental to the educational process.” *Id.* at 493. This is particularly true here where the relationship between assistants and Chicago is not just primarily educational, it is *exclusively* educational.

In *Columbia*, the Board – without justification – overruled nearly 40 years of precedent by holding that students who perform various teaching and research tasks and receive financial aid from the university are “employees” within the meaning of the Act. Though the Board in *Columbia* asserted that changes in higher education over time justified a new look at the employment status of graduate students, 364 NLRB No. 90, slip op. at 8-9, the Board failed to appreciate that the fundamental nature of the relationship between the graduate student assistant and the university remains unchanged.

Conversely, Chairman (then-Member) Miscimarra did, in his dissent in *Columbia*, appreciate the fundamental nature of that relationship. In so doing, he stated that the students’ “instruction-related positions do not turn the academic institution they attend into something that can fairly be characterized as a ‘workplace,’” and that “Congress did not adopt our statute to advance the best interests of college and university students.” *Columbia*, 364 NLRB No. 90, slip op. at 23, 26 (Member Miscimarra, dissenting). Therefore, he would have held in *Columbia* that

“[t]he Board has no jurisdiction over efforts to ensure that college and university students satisfy their postsecondary education requirements.” *Id.* at 23. Chicago posits Chairman Miscimarra is absolutely correct.

Application of the Act should not be determined, as in *Columbia*, by cookie-cutter application of a version of the common law definition of “employee,” without regard for the Act’s core purposes. As the Board correctly stated in *Brown*, Section 2(3) “contains no detailed provisions for determining statutory employee status.” 342 NLRB at 492. Accordingly, “[t]hat issue . . . must be examined in the context of the Act’s overall purpose.” *Id.*; *Columbia*, 364 NLRB No. 90, slip op. at 25 (Member Miscimarra, dissenting) (“I agree with the Board majority’s reasoning in *Brown*.”).

It is as true today as in 1972 – when the Board first excluded students from a bargaining unit – that universities cannot be “square[d] with the traditional . . . structures with which [the] Act was designed to cope in the typical organizations of the commercial world.” *Adelphi University*, 195 NLRB 639, 648 (1972). The *Columbia* Board erred in imposing the NLRA on the primarily educational and non-economic relationship between students and their university, ignoring the Supreme Court’s cautionary note in *NLRB v. Yeshiva University*, 444 U.S. 672, 680-81 (1980) (citing *Syracuse University*, 204 NLRB 641, 643 (1973)), that “principles developed for use in the industrial setting cannot be imposed blindly on the academic world.”

In addition, persuasive policy reasons call for rejecting *Columbia*. That decision unacceptably infringes on academic freedom. By treating graduate students as Section 2(3) employees, the Board necessarily will become involved in issues that undermine universities’ freedom to establish academic policy.

The Board also failed to give serious consideration, as it should have, to the contrary treatment of graduate teaching and research assistants under other statutory schemes, most notably the Fair Labor Standards Act. The Board was unimpressed by a recent U.S. Department of Labor guidance advising that graduate assistants, like those in *Columbia*, would be exempt from the FLSA coverage because they, like virtually all other PhD students who teach or conduct research as part of their academic curriculum, are in an “educational relationship,” not “an employment relationship with the school or any grantor.” U.S. Department of Labor, Wage and Hour Division, *Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act* (May 18, 2016), <https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf>. Under that DOL guidance, “[a]n employment relationship will generally exist with regard to students whose duties are not part of an overall education program and who receive some compensation.” *Id.* That was not the case with the graduate assistants in *Columbia*. Nor is it the case at Chicago where being a teacher assistant is an academic requirement done in the PhD graduate student’s own area of interest and his/her laboratory research is exclusively on the student’s own dissertation topic.³¹

For these and other reasons, Chicago maintains that *Columbia* must be reversed. The mistakes made by the Board there should not be compounded by a direction of election here. The sound standard articulated in *Brown University* should be the standard to determine employee status. Under that standard, Chicago’s PhD graduate students are not employees within the meaning of the Act, and the petition should therefore be dismissed.

³¹ It follows that if the *Columbia* Board will not consider the DOL’s view of graduate teaching and research assistants, no weight should be given to the IRS’s treatment of these students and Chicago’s compliance therewith.

B. PhD Graduate Students Who Are TAs And Conduct Research To Fulfill An Academic Requirement Do Not Share A Community Of Interest With Master's Students, Workshop Coordinators, Non-Lab Research Assistants And PhD Students Teaching In Excess Of Their Requirements.

If Chicago's PhD graduate assistants are, erroneously, held to be "employees," the overall unit sought by Petitioner is inappropriate because it seeks to cobble together disparate groups of students performing wholly unrelated tasks on vastly different terms. Indeed, their only commonality -- that they are students -- is not employment-related.³² As such, Master's students, Workshop Coordinators, Non-Lab Research Assistants and PhD students teaching in excess of an academic requirement should be excluded from the bargaining unit.

Board precedent is well-established: the Board will not certify a grouping of employees that is "arbitrary" or "heterogeneous." *American Cyanamid Co.*, 110 NLRB 89, 95 (1954). When the interests of one group of employees are dissimilar from those of another group, a single unit is not appropriate. *Swift & Co.*, 129 NLRB 1391, 1394 (1961). The Board has also articulated the importance of being "especially watchful in guarding the rights of minority groups whose . . . interests differ in kind from the bulk of the [bargaining unit]." *Syracuse University*, 204 NLRB 641, 643 (1973) (excluding faculty at a law school from a unit of academic faculty because they are "oriented more closely to their chosen field than to the academic or university world . . ."). Indeed, there are significant dangers of conflicts of interests with over-inclusive units where "the likely result is that the interests of the minority will be overlooked or intentionally discounted" as this "conflict might also lead to instability in employer-employee relations." *Pacific Southwest Airlines v. NLRB*, 587 F.2d 1032, 1045 (9th

³² Even assuming that the student status of these individuals were relevant to a community of interest, a "single element of common interest [does not] supply a sufficient bond to overcome the diversity of interests among employees in this otherwise random grouping of heterogeneous classifications." *The Grand*, 197 NLRB 1105, 1106 (1972).

Cir. 1978) (denying enforcement 227 NLRB 1578 (1977)). Therefore, “conjoining employees who lack the necessary community of interests threatens both employee rights and industrial peace.” *Id.*

“A unit is appropriate if the employees in the unit share a community of interest.” *Vanderbilt University*, 10-RC-193205, slip op. at 18 (2017) (citing *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934, 942 (2011)). To determine whether the petitioned-for employees share a community of interest, the Board considers various factors, including: “departmental organization; similarity of skills and duties; similar terms and conditions of employment; similar wages, and benefits; a common or separate supervisor; interchange and contact with other employees in the unit; and functional integration with the Employer’s other employees.” *Id.* at 18-19 (citing *Specialty Healthcare*, 357 NLRB at 942); *see Harvard College*, 269 NLRB 821 (1984).

When the Board’s factors are reviewed, it is evident that the cobbled together members of the proposed bargaining unit simply do not share a community of interest:

- They do not share the same terms and conditions of “employment,” wages or benefits:
 - *Master’s Students*: Unlike Chicago’s PhD students, who are fully funded and receive full tuition remission, an annual stipend, paid health insurance premiums, and student life fees while earning their degrees, Master’s students are typically self-funded, i.e., they pay full tuition for their education, costing at or more than \$70,000 per annum, or must apply for competitive internal and external financial aid fellowships and programs. There is no guaranteed tuition remission or stipend for Master's students as there is for PhD students. To the extent a small handful of Master’s students choose to teach or conduct research, they are compensated

by the hour. Master's students are paid only if they work, as distinguished from Chicago's PhD students who receive their full financial aid package as part of their educational program.

- *Non-Lab Research Assistants*: Non-Lab Research Assistants are paid by the hour or by the project. (Nirenberg 242:4-5; Robertson 577:14-578:2; Owens 1047:7-11; Vanderpoel 1470:18-19; Lagos 1706:8-10; Morse 1783:18-19, 1785:1-3.)
The source of the funding for these tasks is generally a faculty member's personal research budget from Chicago. (Nirenberg 242:6-8; Robertson 578:3-7.)
Payment is not tied to a student's doctoral fellowship funding. (Nirenberg 263:15-18.)
- *Workshop Coordinators*: Workshop Coordinators receive a nominal stipend each quarter, above and beyond the traditional PhD funding. (Niestat 93:7-20; Owens 1032:23-1033:3; Robertson 538:25-539:3; Vanderpoel 1475:15-1476:1; Korola 1376:9-12; Powell 2037:22-2038:3.)
- *PhD Students Teaching in Excess of Degree Requirements*: As described above at p. 57, Chicago discourages students from teaching in excess of their academic requirements. When students voluntarily teach in excess of requirements, however, they receive funding specifically for that teaching opportunity. (Robertson 560:20-561:1; Owens 1036:7-12; Wild 321:1-4; Prince 627:15-25.)
Sometimes, these students apply for Prize Lectureships, which provide funding for a course of their own.

- They do not share the same skills and thus do not perform the same duties:

- *Master's Students*: Obtaining a Master's degree does not require that students learn to teach or conduct doctoral level research as part of the degree requirements or in their professional career. Master's students are not required to write and defend a dissertation to get their degree.
- *Non-Lab Research Assistants*: Unlike PhD graduate Research Assistants who conduct research for their dissertation, Non-Lab Research Assistants often conduct research on a topic selected by the faculty member, which has no material relation to the student's dissertation topic. (Robertson 578:11-24; Vanderpoel 1485:20-1486:3.)
- *Workshop Coordinators*: Workshop Coordinators find speakers to present on academic papers in progress, create a workshop schedule, coordinate with presenters, read the materials submitted, and prepare questions for presenters. (SOF at p. 56.) Being a Workshop Coordinator is a professional development opportunity, not an academic requirement. Unlike lab research, which is a daily activity, or teaching, which can involve classes that meet one or more times per week throughout the quarter, workshops meet much less frequently—only four to seven times over the course of a quarter. (Er. Ex. 12 at 2.)
- There is no interchange with the other students:
 - There is no evidence that any of the positions at issue are moved to one of the other positions to meet a need for additional people for particular situations, and Petitioner has not in any way established such a record.
- They are not trained or mentored in the same manner:

- *Non-Lab Research Assistants:* Non-Lab Research Assistants do not receive the same exhaustive mentoring provided to PhD students who teach or conduct research to fulfill an academic requirement. (Owens 1033:14-19; *also compare* Nirenberg 179:14-20, 180:11-20 (interaction with Non-Lab RAs); Robertson 536:21-537:1 (same) *with* Robertson 514:24-516:7, 517:23-518:14 (interaction with TAs); Nirenberg 141:25-142:25, 143:18-144:20, 147:5-10, 148:11-149:3 (same).)
- *Workshop Coordinators:* Workshops Coordinators do not receive the extensive and formal pedagogical and research skills training that is provided to TAs and Research Assistants by the Chicago Center for Teaching, the Writing Program, and individual Departments. (*Compare* Niestat 86:8-10, 86:21-87:1, 87:24-88:21 (discussing Handbook and orientation of Workshop Coordinators) *with* Robertson 514:24-516:7, 517:23-518:14 (interaction with TAs); Nirenberg 141:25-142:25, 143:18-144:20, 147:5-10, 148:11-149:3 (same).)
- *PhD Students Teaching in Excess of Degree Requirements:* Students teaching beyond their requirement are no longer exposed to close mentorship and guidance from faculty members nor are they generally required to obtain additional formal pedagogical training. (Nirenberg 175:2-11; Prince 629:11-21; Hopkins 870:24-871:9.)
- They are not subject to the same policies and procedures, including appointment procedures:
 - PhD students teaching to fulfill academic credit receive priority in TA course selection over students teaching in excess of their requirements who volunteer to

TA the same course. (Wild 312:8-13; Robertson 535:5-10.) Hence, there is actually a potential conflict between Petitioner's proposed bargaining unit members.

- PhD students teaching to fulfill academic credit may receive handbooks that provide additional guidance depending on field of study and courses being taught. Workshop Coordinators get a different handbook with guidelines related to the Council on Advanced Studies workshop program. There is nothing in the record that suggests that there are standardized policies that apply to the ad-hoc personalized projects of Non-Lab Research Assistants.

Master's students, Workshop Coordinators, Non-Lab Research Assistants and PhD Students teaching in excess of degree requirements thus have entirely different interests and objectives than PhD graduate students teaching and conducting research to fulfill an academic requirement. Unlike PhD graduate students fulfilling their academic requirement, these four groups of students volunteer to teach, research or coordinate workshops purely by their choice. There is no academic requirement that they take on these responsibilities. They seek out and accept these assignments on their own to enhance their personal learning experience, for the income derived and other personal reasons known only to them – but not as part of their academic program. Indeed, the teaching and research that they voluntarily undertake can be and often is completely unrelated to their educational interest. Because of the vastly different career aspirations, academic pursuits, economic interests, duties, responsibilities, and terms and conditions of “employment,” these four groups of students should not be in the same unit as PhD graduate students teaching and conducting research to fulfill their academic requirements.

C. If An Election Is Directed, The Board’s Standard Voter Eligibility Formula Should Be Applied.

The standard voter eligibility formula applied by the Board in representation elections includes all employees in the petitioned-for classifications who are on the employer’s payroll and working as of the close of the pay period immediately preceding either the issuance of a decision and direction of election, or the approval of a stipulated election agreement. *See Greenspan Engraving Corp.*, 137 NLRB 1308 (1962); *Gulf States Asphalt Co.*, 106 NLRB 1212 (1953); *Reade Manufacturing Co.*, 100 NLRB 87 (1952); *Bill Heath, Inc.*, 89 NLRB 1555 (1950); *Macy’s Missouri-Kansas Division v. NLRB*, 389 F.2d 835 (8th Cir. 1968); *Beverly Manor Nursing Home*, 310 NLRB 538 n.3 (1993). Moreover, the Board can take administrative notice that the standard eligibility formula has been followed in other graduate student elections conducted by the Board, including NYU, Harvard, Yale, and Loyola University of Chicago, among others. (Tr. 1620:9-1623:14; Er. Ex. 65.) Indeed, of the twelve universities that have been subject to graduate student representation petitions, nine have used the standard voter eligibility formula.³³ (*Id.*) Only three have used another formula.³⁴ (*Id.*)

When the parties disagree on the formula to determine voter eligibility, as in this case, the Board has said that unless “the evidence adduced at the hearings . . . support[s] a deviation from our usual eligibility requirements, eligibility will be determined by the usual payroll period.” *See*

³³ At the hearing, counsel for the Petitioner argued that “there was no discussion of the appropriate eligibility period” in eight of the cases that used the standard formula. (Tr. 2083:19-2084:1.) Even if true, however, Petitioner’s assertion is irrelevant. What is relevant is that—in those cases—the Regional Director concluded that the standard eligibility formula was appropriate.

³⁴ One of the three elections directed using an eligibility formula other than the Board’s standard formula was in *Duke University*. There, however, the Regional Director erroneously refused to hold a hearing on the eligibility formula. *Duke University*, Case No. 10-RC-187957. Because the Board ultimately found the Regional Director’s refusal to be in error, no weight can be given to *Duke’s* Decision and Direction of Election. *Id.* The other two of the three cases that did not apply the standard eligibility formula were written by the same Regional Director, Regional Director Fernbach of Region 2. *Columbia University*, Case No. 02-RC-143012; *The New School*, Case No. 02-RC-143009. Thus, the sum total of this analysis is that no Region other than Region 2 has applied a non-standard voter eligibility formula.

B-W Construction Co., 161 NLRB 1600, 1602 n.4 (1966) (citing *R.B. Butler, Inc.*, 160 NLRB 1595 (1966)).

Here, there is a sharp dispute between the parties over the correct voter eligibility formula to use. Chicago maintains that the Board's standard eligibility formula, as described above, should be used. (Tr. 1616:19-1617:4; Bd. Ex. 3.) The Petitioner, on the other hand, advocates for a one academic-year look-back period, under which any student who was in a petitioned-for classification during the Summer 2016 quarter, Autumn 2016 quarter, Winter 2017 quarter, or Spring 2017 quarter would be eligible to vote. (Tr. 2083:3-10.) Because the Petitioner is seeking a voter eligibility formula other than the standard eligibility formula, the burden was on it to present evidence to demonstrate that a look-back is appropriate. *See B-W Construction Co.*, 161 NLRB 1600 (1966); *R.B. Butler, Inc.*, 160 NLRB 1595 (1966). The Petitioner has dramatically failed to meet that burden.

The eligibility of graduate students who held instructional or research appointments during the Summer 2016, Autumn 2016 and Winter 2017 quarters, but were not in that capacity during the Spring 2017 quarter, turns on whether those students have a "continuing interest in the terms and conditions of employment of the unit," *i.e.*, are they likely to be appointed again. *See Columbia*, 364 NLRB No. 90, slip op. at 21. Given that the Spring 2017 quarter closed on June 10, assuming that an election, if any, is ordered in this case, such order would be issued after the Spring 2017 quarter has ended. Here, the Petitioner failed to produce any evidence demonstrating that students who are in petitioned-for classifications during the Summer 2016 quarter, Autumn 2016 quarter, Winter 2017 quarter and Spring 2017 quarter are likely to be in those positions in the future.

In *Columbia*, the Regional Director determined in a Supplemental Decision and Direction of Election issued on October 31, 2016, that a non-standard voter eligibility formula, with a one-year look-back period, was appropriate. However, the Regional Director made that determination after a day-long hearing on remand by the Board on facts markedly different from the facts here. *Columbia*, 364 NLRB No. 90, slip op. at 22. At decentralized Chicago, teaching and research expectations vary widely by School, Division and Department/Program, and are based on varying degree requirements and their sequences. (Tr. 1618:7-1620:8; Er. Ex. 15A.) As a result, there can be no single answer across the petitioned-for Divisions, Schools, Departments and Programs at Chicago as to whether any particular graduate assistant who held an appointment in the past, is likely to hold one in the future. (*Id.*)

Faculty and administrators from several Schools, Divisions, and Departments/Programs presented uncontroverted evidence that students who satisfy their academic teaching or research assistantship requirements are **discouraged** from serving in those positions again. For example, Beth Niestat testified that Chicago does not have a centralized organization overseeing all of the graduate degree programs, and as a result of this decentralized structure, the various Schools, Divisions, and Departments/Programs grant degrees and set their own academic requirements for future teaching opportunities. (Niestat 55:14-56:6.) Further undercutting the Petitioner's position is the fact that David Nirenberg, Anne Robertson, and Theresa Owens all testified that they discourage students from serving beyond their academic requirement. (Nirenberg 164:1-5; Robertson 490:22-24; Owens 1001:12-24.)

Significantly, none of Chicago's evidence on the lack of "look back" eligibility has been rebutted by the Petitioner, which has produced no evidence of its own to support a finding that graduate students currently in a petitioned-for classification or in one during the 2016-17 school

year, would have a reasonable expectation of returning. As a result of the Petitioner's failure to meet its burden of proof, it has not been shown—let alone proven—that graduate students who held an instructional or research assistantship in the past, have the necessary “continuing interest” in the terms and conditions of employment to justify their participation in any election.

For these reasons, the Regional Director should apply the standard eligibility formula proposed by Chicago in the event that an election is directed.

D. If An Election Is Directed, The Parties Have Jointly Requested A Manual Ballot Election To Be Held On Multiple Days On Chicago's Campus No Sooner Than October 17, 2017.

If the Regional Director directs an election (which he should not), Chicago and the Petitioner generally agree on the election details. Although the Petitioner initially petitioned for a mail ballot election before the close of the Spring 2017 quarter, prior to the close of the hearing, the Petitioner changed its position and agreed with Chicago to request a **manual ballot election** no sooner than October 17 and 18, 2017 (and alternatively October 10 and 11, 2017).

(Tr. 2087:8-23.) The parties also jointly requested that the appropriate timeframe be 9:00 a.m. to 9:00 p.m. (Tr. 1613:9-11, 2088:14-16.)

Chicago and Petitioner also share common ground on the election days. The Petitioner requested either a two-day or three-day election on a Tuesday, Wednesday, and Thursday. (Tr. 2088:8-13.) Specifically, the Petitioner first proposed October 17, 18 and 19 (and second proposed October 10, 11, and 12). (Tr. 2089:15-17.) Chicago is agreeable to a two-day election in the middle of the week, provided that the close of the last payroll period preceding the Decision and Direction of Election captures all students who would be eligible to vote as of the Autumn 2017 quarter, which starts on September 25, 2017.

The parties, however, disagree on polling locations. Chicago proposed the following three locations: (1) Kent Chemical Laboratory (1020-24 E. 58th St., Chicago, IL 60637) in Room 114; (2) Stuart Hall (5835 S. Greenwood Ave., Chicago, IL 60637) in the Cox Lounge; and (3) Biological Learning Sciences Center (924 E. 57th St., Chicago, IL 60637) in the fourth floor lounge. The Petitioner suggested the following four different locations: (1) Social Services Administration building (969 E. 60th St., Chicago, IL 60637) in any available classroom; (2) Crerar Library (5730 S. Ellis Ave., Chicago, IL 60637) in the Kathleen A. Zar Room; (3) Regenstein Library (1100 57th St., Chicago, IL 60637) in Room 122; and (4) Eckhart Hall (1118 E. 58th St., Chicago, IL 60637) in any available classroom. If an election is ordered, Chicago is agreeable to working out these election details with the Regional Director and Petitioner.

E. The Regional Director Should Investigate Whether The Petition Is Tainted By The Involvement Of Three Supervisors In The Petitioner’s Organizing Efforts.

Chicago has proffered evidence that three Petitioner witnesses who testified at the hearing—Professors Denis Hirschfeldt, Anton Ford, and Kenneth Warren—tainted the Petitioner’s petition by engaging in pro-union conduct as supervisors of petitioned-for graduate students. The NLRB Casehandling Manual states that “[i]f the regional director is presented with supporting evidence that gives reasonable cause to believe that the showing of interest may have been invalidated, the regional director should conduct a further administrative investigation.” NLRB Casehandling Manual (Part Two), Representation Proceedings, Secs. 11021, 11028.1 (January 2017) (citing *Perdue Farms, Inc.*, 328 NLRB 909 (1999)). “The Board has held that if a supervisor directly solicits authorization cards, those cards are tainted and may

not be counted for the showing of interest.” *Dejana Industries, Inc.*, 336 NLRB 1202, 1202 (2001).³⁵

Here, there is undoubtedly sufficient evidence—at least worthy of further investigation by the Regional Director—suggesting that the showing of interest may have been invalid. First, all three professors that publicly supported the Petitioner and its organizing efforts are statutory supervisors. Professors Hirschfeldt and Warren are full professors in the Math and English Language and Literature Departments, respectively. (Hirschfeldt 1303:3-6; Warren 1935:25-1936:14.) Professor Ford is a tenured associate professor and the Director of Undergraduate Studies in the Philosophy Department. (Ford 1411:10-19.) Each has taught courses that have had graduate student assistants, which means that if those students are statutory employees, the professors are statutory supervisors. (Hirschfeldt 1305:4-6; Ford 1412:11-13, 1431:22-1432:3; Warren 1937:13-15.) Professor Ford further testified that, as the Director of Undergraduate Education in Philosophy, he is responsible for choosing instructors and preceptors (Ford 1431:9-

³⁵ Though no election has been directed or held in this case, in cases involving objections to an election based on supervisory pro-union conduct, the Board looks at:

- (1) Whether the supervisor's pronion conduct reasonably tended to coerce or interfere with the employees' exercise of free choice in the election. [. . .] This inquiry includes: (a) consideration of the nature and degree of supervisory authority possessed by those who engage in the pronion conduct; and (b) an examination of the nature, extent, and context of the conduct in question.
- (2) Whether the conduct interfered with freedom of choice to the extent that it materially affected the outcome of the election, based on factors such as (a) the margin of victory in the election; (b) whether the conduct at issue was widespread or isolated; (c) the timing of the conduct; (d) the extent to which the conduct became known; and (e) the lingering effect of the conduct.

Harborside Healthcare, Inc., 343 NLRB 906, 909 (2004). If the Regional Director directs an election in this case, the conduct of Professors Warren, Hirschfeldt, and Ford certainly will coerce not only their student assistants to vote for the Union, but will also interfere with the free choice of students who have taken the professors' courses or otherwise worked with them. Even students who have never worked with the professors may be unduly influenced by the professors' conduct merely based on their stature at Chicago and with Chicago's AAUP chapter. Because the professors testified at the pre-election hearing and signed a publicized petition in support of the Union, their supervisory conduct is widespread and well-known among students and thus will materially affect the outcome of any election.

25.) Therefore, the three professors are decision-makers with “supervisory” authority, making them supervisors under Section 2(11) of the Act and *NLRB v. Yeshiva University*, 444 U.S. 672 (1980).

Notwithstanding their “supervisory” status, each witness holds a leadership position in Chicago’s chapter of the AAUP. Professors Warren and Hirschfeldt are Chapter Vice-Presidents and Professor Ford is the Secretary and founding member of the Chapter. (Tr. 1435:18-1436:2; Rejected Er. Exs. 52-54.)

In light of the foregoing, the Board should find it highly irregular—indeed unlawful—for these three professors to have engaged in pro-union conduct designed to persuade students to support the Petitioner. All three professors, in their capacity as officials of Chicago’s AAUP chapter, signed at least two letters supporting the Petitioner, one of which was published by AAUP on September 29, 2016, during the Petitioner’s organizing drive. (Rejected Er. Exs. 52, 54.) In another letter, the professors requested that their colleagues seek to include Petitioner representatives in any meetings with graduate students about unionization.³⁶ Then, on or around October 17, 2016, Chicago’s AAUP chapter—run by the three professors—collaborated with the Petitioner to organize a pro-union event where Professor Ford presented a panel of speakers, including Professor Hirschfeldt, who seemingly urged students to unionize. (Rejected Er. Ex. 53.) Therefore, the professors have—at minimum—attempted to persuade students to sign authorization cards in support of the Petitioner. Accordingly, the Regional Director should conduct an investigation to determine whether the supervisors invalidated the Petitioner’s showing of interest and, as required, dismiss the petition.

³⁶ *Statement of Support for the Right of Graduate Students to Unionize*, American Association of University Professors, <https://uchicagoaap.wordpress.com/statement/>.

CONCLUSION

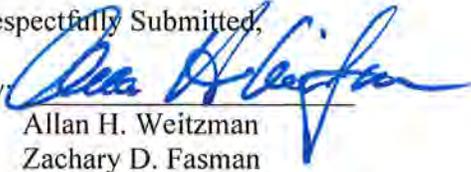
The PhD students whom Petitioner seeks to represent are not “employees” within the meaning of Section 2(3) of the NLRA as recently interpreted by the Board in *Columbia University*. Therefore, the petition fails to raise a question concerning representation of employees and must be dismissed. In the event that the Regional Director concludes otherwise, Workshop Coordinators, Non-Lab Research Assistants, Master’s Students and PhD students teaching in excess of their academic degree requirements must be excluded from the bargaining unit, as they do not share a community of interest with the remaining members of the petitioned-for-unit, PhD students teaching or researching in fulfillment of their academic requirements.

In the event that an election is directed, the only TAs and Research Assistants who should be eligible to vote are those who are both on the Chicago payroll and providing instructional or research services during the pay period immediately preceding a direction of election and on the dates of the election. Finally, to ensure maximum participation by eligible voters and fully effectuate the purposes of the Act, if any election is conducted it must be by manual ballot, on the Chicago campus no sooner than October 17 and 18, 2017, provided that the immediately preceding payroll date will capture all eligible students as of the Autumn 2017 quarter.

Dated: June 15, 2017
Chicago, Illinois

Of Counsel:
Paul Salvatore
Steven J. Pearlman
Steven J. Porzio
Mariya Nazginova
Alex C. Weinstein
David L. Bayer

Respectfully Submitted,

By: 
Allan H. Weitzman
Zachary D. Fasman

PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036-8299
(212) 969-3000

**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

Date of Electronic Mailing: June 15, 2017

CERTIFICATION OF SERVICE OF: The University of Chicago's Post-Hearing Brief

I hereby certify that, on the 15th day of June 2017, I caused the above-entitled document(s) to be served by the methods indicated below, upon the following persons at the following addresses:

By E-File

Peter Ohr
Regional Director
National Labor Relations Board, Region 13
Dirksen Federal Building, Suite 808
219 South Dearborn Street
Chicago, IL 60604-2027

By Electronic Mail

Melissa J. Auerbach
(mauerbach@laboradvocates.com)
Dowd, Bloch, Bennett, Cervone, Auerbach &
Yokich
8 South Michigan Avenue, 19th Floor
Chicago, IL 60603-3315

By Electronic Mail

Channing Cooper (ccooper@aft.org)
American Federation of Teachers, AFL-CIO
555 New Jersey Ave NW Floor 10
Washington, DC 20001-2029

Dated: June 15, 2017



Alex C. Weinstein