

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE NEW SCHOOL

Employer

and

Case 02-RC-143009

STUDENT EMPLOYEES AT THE  
NEW SCHOOL—SENS/UAW  
Petitioner

ORDER

On October 21, 2015, the Board granted Employer's Request for Review of the Regional Director's Supplemental Decision and Order Dismissing the Petition.

On August 23, 2016, the Board issued its decision in *Columbia University*, 364 NLRB No. 90, which specifically held that student assistants who have a common-law employment relationship with their university or college are statutory employees under the National Labor Relations Act. The Board further held that the petitioned-for unit of graduate, master's degree, and undergraduate student assistants is an appropriate unit, and that none of the student assistants should be excluded from the unit as temporary employees. The Board remanded the case to the Regional Director to establish an appropriate voting eligibility formula.

Accordingly, the Board remands<sup>1</sup> this proceeding to the Regional Director for further appropriate action consistent with *Columbia University*, including reopening the record, if necessary.<sup>2</sup>

MARK GASTON PEARCE,

CHAIRMAN

LAUREN McFERRAN,

MEMBER

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<sup>1</sup> In so doing, we reject the Employer's argument that we should require the Regional Director to conduct an additional review of the Petitioner's showing of interest prior to the conduct of an election. A determination of showing of interest is a threshold administrative inquiry designed to insure that a significant number of employees desire to participate in an election; once the showing has initially been made, the Board has adhered to the practice of resolving further questions of the level of support for a union on the basis of a Board-conducted election. See *Big Y Foods*, 238 NLRB 855, 855 fn. 4 (1978).

<sup>2</sup> In light of the Board's holdings in *Columbia University*, Chairman Pearce would find the record here establishes that student assistants are statutory employees and that it is therefore unnecessary to remand that issue to the Regional Director.

Member Miscimarra, dissenting in part:

I would deny review of the Regional Director's order dismissing the petition in this case. Applying *Brown University*, 342 NLRB 483 (2004), the Regional Director found that the petitioned-for student assistants were not statutory employees. For the reasons stated in my dissenting opinion in *Columbia University*, 364 NLRB No. 90, slip op. at 22-34 (2016), I agree with the Board majority's determination in *Brown* that "graduate student assistants who are admitted into, not hired by, a university, and for whom supervised teaching or research is an integral component of their academic development" should not be deemed employees under the Act. *Brown*, 342 NLRB at 483. Because the petitioned-for student assistants in this case, like those in *Brown* and *Columbia*, have a predominately academic relationship with their school, I believe that the Regional Director properly dismissed the petition. I nevertheless believe that the parties should have the opportunity to develop a factual record informed by the principles stated in the majority and dissenting opinions in *Columbia*. Accordingly, I concur in the decision to remand this case to the Regional Director, and I believe that the record must be reopened at the request of either party to provide the opportunity to develop an evidentiary record that takes into account the Board's *Columbia University* decision.

PHILIP A. MISCIMARRA,

MEMBER

Dated, Washington, D.C., December 23, 2016.