UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

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In the Matter of

BROWN UNIVERSITY

- and -

Case No. 1-RC-21368

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, AFL-CIO,

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BRIEF OF *AMICUS CURIAE* AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS IN SUPPORT OF UNITED AUTOMOBILE WORKERS, AFL-CIO

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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

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In the Matter of

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

- and -

Case No. 2-RC-22358

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, UAW, AFL-CIO,

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BRIEF OF *AMICUS CURIAE* AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS IN SUPPORT OF UNITED AUTOMOBILE WORKERS, AFL-CIO

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INTRODUCTION

Former National Labor Relations Board Chair Miller once observed about higher education unionization decisions:

> I personally have felt sometimes as though we were having to make these [higher education] determinations pretty much in the dark, without the aid of information which could have enabled us to make more informed judgments. We must, of course, decide each case presented to us on the basis of information that is developed on that individual record. I hope that we have not decided cases unwisely because of too scanty information, and thus established precedential guidelines that we will later regret.

Miller, *Is the NLRB Still Alive?,* Address before the Texas Bar Association (July 6, 1973), at 10-11, *in* Matthew W. Finkin, "The NLRB in Higher Education," 5 U. TOL. L. REV. 608, 650 (1974). The American Association of University Professors welcomes the opportunity to participate in this case as *amicus curiae* before the Board to address the problem of "too scanty information" about collective bargaining in the academic community.

INTEREST OF THE *AMICUS CURIAE*

The American Association of University Professors ("AAUP" or "the Association") is a national educational organization of approximately 46,000 faculty members, research scholars, and graduate students in all academic disciplines. Founded in 1915, the Association is committed to the defense of academic freedom and the free exchange of ideas in scholarly and creative work. Local AAUP chapters exist on close to 400 campuses across the country. Out of a total of 63 local unionized AAUP chapters, 23 are at private sector higher education institutions.

The AAUP plays a unique role in the academic community. Among the organization's central functions is the development of policy standards for the protection

of academic freedom, tenure, due process, shared governance, and other elements central to higher education. *See, e.g.,* American Association of University Professors, *1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments,* AAUP POLICY DOCUMENTS & REPORTS 3 (2001 ed.) (*1940 Statement*) (endorsed by more than 180 professional organizations and learned societies). AAUP's policies are widely respected and followed as models in American colleges and universities. *See, e.g., Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 579 n.17 (1972) (citing AAUP's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*); *Tilton v. Richardson*, 403 U.S. 672, 681-82 (1971) (citing the *1940 Statement*). AAUP has served as *amicus* in numerous cases involving faculty members and collective bargaining. *See, e.g., NLRB v. Yeshiva University,* 444 U.S. 672 (1980). The AAUP filed an *amicus* brief in *New York University,* 332 NLRB No. 111 (2000).

AAUP provides policy assistance to the higher education community at large. As former AAUP President Robert A. Gorman stated:

> The AAUP—by virtue of its history and traditions, its values and its procedures—is different from, and more than, a labor organization. . . . We do not require, and have never required, Association membership as a condition of receiving our aid and good offices. Promoting the academic freedom, or protecting the procedural rights, even of a nonmember is viewed as redounding not only to the benefit of our dues-paying members, and of all of the professoriate, but also to the benefit of all institutions of higher education. Institutions are better, and the quality of higher education improved for what we do, even on behalf of "strangers" to the Association.

Robert A. Gorman, "The AAUP and Collective Bargaining: A Look Backward and Ahead," 68 ACADEME: BULLETIN OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS 1a, 2a (Sept./Oct. 1982).

ARGUMENT

In *New York University* (*NYU*) the Board wisely ruled that the speculative claims of colleges and universities that collective bargaining would violate their institutional academic freedom was not a public policy basis for excluding graduate assistants from coverage under the National Labor Relations Act (NLRA). 332 N.L.R.B. No. 111 (2000), slip op. at 3 (The Board was "not persuaded" by *NYU*'s argument that "extending collective-bargaining rights to graduate assistants would infringe on the Employer's academic freedom."). The Board should leave undisturbed its well-reasoned and factually grounded *NYU* decision, and affirm the Regional Directors' rulings in *The Trustees of Columbia University in the City of New York*, 2-RC-22358 (Feb. 11, 2002) ("*Columbia University"*), and *Brown University*, 1-RC-21368 (Nov. 16, 2001), both of which rely on *NYU*.[1]

Ample support exists for the *NYU* Board's rejection of the assertion that unionization of graduate students who are employees will violate the institution's First Amendment academic freedom. This "doomsday cry" is, at best, speculative, and, at worst, misleading. *See Regents of the University of California v. PERB*, 715 P.2d 590, 605 (Cal. 1986) (finding as "doomsday cry" university's contention that the unionization of medical school residents would lead to violation of the institution's academic freedom).

[1] Because both the Columbia and Brown administrations contend that unionization by graduate assistants violates their institutional academic freedom, the same *amicus curiae* brief, which addresses that issue, is being filed in both cases.

First, courts have consistently rejected the argument that the First Amendment shields institutions from federal law such as the NLRA. *See, e.g., Associated Press v. NLRB*, 301 U.S. 103 (1937).

Second, both national AAUP policies on faculty collective bargaining and local AAUP faculty union experience demonstrate that collective bargaining is not only consistent with, but can promote, academic freedom. Local AAUP collective bargaining chapters' contracts include academic freedom provisions to protect individual academic freedom. Just as faculty members have negotiated protections for individual academic freedom in their contracts with administrations, so too can administrations protect their academic freedom through collective bargaining.

Third, the unionization of graduate assistants does not violate institutional academic freedom or interfere with the student-faculty mentoring relationship. National AAUP policy supports the unionization of graduate assistants who are deemed employees and choose to unionize. The experience of the Rutgers Council of AAUP Chapters demonstrates that collective bargaining by graduate students has operated effectively without inhibiting the academic freedom of the faculty or the institution. Research indicates that faculty generally support the right of graduate students to bargain collectively, and that collective bargaining does not inhibit the mentor relationship.

Fourth, state courts, like the Board in *NYU*, have found that affording other graduate student employees, such as housestaff, the right to unionize does not interfere with educational decisionmaking, because parties can resolve many of their differences through collective bargaining. *See, e.g., Regents of the University of California*, 715 P.2d

at 590; *Regents of the University of Michigan v. Employment Relations Commission*, 204 N.W.2d 218 (Mich. 1973).

Lastly, the Board should find that graduate assistants may be "employees" under the NLRA, even when administrations characterize graduate assistant work as academically required, because students may meet the statutory definition of "employee" under Section 2(3), even when teaching is part of their academic requirements.

I. THE BOARD WISELY REASONED IN *NYU* THAT COLLECTIVE BARGAINING DOES NOT VIOLATE THE ACADEMIC FREEDOM OF UNIVERSITIES.

Ample support exists for the *NYU* Board's rejection of the "doomsday cry" by academic administrations that unionization of student-employees interferes with institutional academic freedom. *NYU*, slip op. at 4; *see Regents of the University of California*, 715 at 604. In *NYU* the Board wisely reasoned,

> While mindful and respectful of the academic prerogatives of our Nation's great colleges and universities, we cannot say as a matter of law or policy that permitting graduate assistants to be considered employees entitled to the benefit of the Act will result in improper interference with the academic freedom of the institution they serve.

NYU, slip op. at 4; *see also Boston Medical Center*, 330 N.L.R.B. No. 30 (1999), slip op. at 13-14 (rejecting employer's academic freedom argument because it puts "the proverbial cart before the horse": "The contour of collective bargaining is dynamic with new issues frequently arising out of new factual contexts . . ."). The Board in *NYU* properly found no public policy reason to exclude graduate assistants who were deemed employees from the protections afforded by the NLRA.

The administrations claim that their academic freedom is violated by allowing graduate assistants to bargain collectively. *Request for Review of Columbia University to*

the NLRB 14-18 (Mar. 5, 2002); *Request for Review of Brown University to the NLRB* 5-6 (Dec. 31, 2001). Such assertions misunderstand the interplay between academic freedom and the laws that govern employers, including the administrations and governing boards of colleges and universities.

A. The First Amendment Does Not Immunize Universities from the National Labor Relations Act.

Institutional First Amendment academic freedom has never been a basis for "immunizing" higher education administrations from the application of federal law, including the NLRA and Title VII of the Civil Rights Act. *See Associated Press v. NLRB*, 301 U.S. 103, 133 (1937); *Powell v. Syracuse University*, 580 F.2d 1150 (2d Cir.), *cert. denied*, 439 U.S. 984 (1978).

Courts have long recognized academic freedom as a "special concern of the First Amendment." *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967). Such academic freedom typically protects both professors and institutions. *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); *Regents of the University of California v. Bakke*, 438 U.S 265, 312-13 (1978) (Powell, J., concurring); *see also Aguillard v. Edwards*, 765 F.2d 1251, 1257 (5th Cir. 1983) ("Academic freedom embodies the principle that individual instructors are at liberty to teach that which they deem to be appropriate in the exercise of their professional judgment."), *aff'd*, 482 U.S. 578 (1987).

Nevertheless, courts have ruled that the First Amendment rights of institutions, like that asserted by the administrations of Brown University and Columbia University, does not preclude application of the NLRA. In *Associated Press*, 301 U.S. at 103, the United States Supreme Court ruled that the application of the NLRA to an editorial employee did not violate freedom of speech or of the press under the First Amendment.

The Associated Press (AP) argued that, "whatever may be the case with respect to employees in its mechanical departments it must have absolute and unrestricted freedom to employ and discharge those who . . . edit the news," because its "function" was to report news "without bias" and so, it could not "be free to furnish unbiased and impartial news reports unless it is equally free to determine for itself the partiality or bias of editorial employees." *Id.* at 131.

The Court rejected the AP's assertion that "any regulation protective of union activities, or the right collectively to bargain on the part of such employees, is necessarily an invalid invasion of the freedom of the press." *Id.* In so ruling, the majority roundly criticized the publisher for relying on a hypothetical and counterfactual claim of bias to assert a total prohibition against the application of the NLRA to editorial employees: "It seeks to bar all regulation by contending that regulation in a situation not presented would be invalid." *Id.* at 132. The Court observed that coverage under the NLRA in no way "circumscribes the full freedom and liberty [of the AP] to publish the news as it desires it published or to enforce policies of its own choosing with respect to the editing and rewriting of news for publication, and the [AP] is free at any time to discharge . . . any editorial employee who fails to comply with the policies it may adopt. " *Id.* at 133. Accordingly, the Court found the employer's argument "an unsound generalization," reasoning that

> [t]he business of the Associated Press is not immune from regulation because it is an agency of the press. The publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others.

Id. at 132-33. Therefore, the NLRA applied to the AP, and journalists had the right to bargain under the Act. Just as the AP was not immune on First Amendment grounds

from the NLRA, nor are higher education institutions. Since the early 1970s the Board has applied the NLRA to colleges and universities. *Cornell University*, 183 NLRB 329, 334 (1971) ("[W]e are convinced that assertion of jurisdiction is required over those private colleges and universities whose operations have a substantial effect on commerce to insure the orderly, effective, and uniform application of national labor policy."); *C.W. Post Center of Long Island University*, 189 NLRB 904 (1971) (recognizing unit of faculty members). In *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), the U.S. Supreme Court ruled that some faculty members may be managers and, therefore, excluded from coverage under the NLRA. While recognizing that the "pyramidal hierarchies of private industry . . . . in the industrial setting cannot be 'imposed blindly on the academic world,'" the Court (and the Board) in no way embraced the notion that universities are immune from application of the Act. *See id.* at 680-81 (citations omitted). Accordingly, the Board has applied in post-*Yeshiva* cases the protections of the NLRA to faculty members who are employees. *See, e.g., Manhattan College*, 2-RC-21735 (Nov. 9, 1999); *NLRB v. Cooper Union*, 783 F.2d 29 (2d Cir.), *cert. denied*, 479 U.S. 815 (1986); *Marymount College of Virginia*, 280 NLRB 486 (1986).

Similarly, First Amendment academic freedom does not immunize colleges and universities from other laws of general application, such as Title VII of the Civil Rights Act. In *Powell v. Syracuse University*, 580 F.2d at 1150, the Second Circuit emphasized that a university's First Amendment right to academic freedom did not allow it to violate Title VII. In that case, a female professor sued the university for race and gender discrimination in the nonrenewal of her employment contract. The Second Circuit, in affirming the trial court decision, ruled that the then-current judicial "anti-interventionist

policy" afforded to higher education institutions, which made them "virtually immune to charges of employment bias," had "been pressed beyond all reasonable limits." *Id.* at 1153. The court concluded that judicial precedent did not, and "was never intended to, indicate that academic freedom embraces the freedom to discriminate." *Id*. at 1154; *see also University of Pennsylvania v. EEOC*, 493 U.S. 182, 200 (1990) (ruling that the First Amendment does not preclude the applicability of Title VII to the tenure review process at a private university because claims of injury to institutional academic freedom were too "speculative" and "attenuated"); *Craine v. Trinity College*, 259 Conn. 625, 646 (S. Ct. 2002) ("[D]eference to the judgment of academia cannot result in abdication of the judiciary's responsibility to find and redress discrimination.").

The Brown and Columbia administrations improperly cite "speculative" violations of institutional academic freedom as a bar against the application of the NLRA. *See University of Pennsylvania*, 493 U.S. at 200. But higher education administrations have no more "special immunity" from the NLRA than does the AP. *See Associated Press*, 301 U.S. at 132-33. Just as the publisher in *Associated Press* had the employer prerogative not to hire or retain an editor who "fails faithfully to edit the news to reflect the facts without bias and prejudice," so, too, does the university administration, as an employer, have the right to hire and retain those graduate assistants who best meet its academic needs. *See id.* at 132. The administrations' fears and "unsound generalization[s]" about the consequences of collective bargaining by graduate students, like the AP's concerns after passage of the Wagner Act, do not "immunize" the administration from federal labor law. *See Associated Press*, 301 U.S. at 132; *see also NLRB v. Wentworth Institute*, 515 F.2d 550, 556 (1st Cir. 1975) (rejecting institute's

argument that finding faculty to be employees and allowing them to engage in collective bargaining "will supposedly result in erosion of academic freedom").

The university is entitled to no "special privilege" in seeking to prohibit the unionization of its graduate and undergraduate assistants. *See Associated Press*, 301 U.S. at 132. Just as academic freedom fails to "embrace" the right of a university to discriminate, it does not "embrace" the right of a university to prohibit students who are deemed employees from unionizing. *See Powell*, 580 F.2d at 1154. Like the Equal Employment Opportunity Commission (EEOC), which has the authority to investigate whether colleges and universities discriminate against their staff and faculty, so does the Board have the authority to determine under its criteria whether graduate students are "employees" under Section 2(3) of the Act. *See University of Pennsylvania*, 493 U.S. at 182.

Ultimately, the application of the NLRA to the university need not circumscribe the academic freedom of the institution to hire and retain those graduate assistants who best meet the needs of the university's academic programs. Based on local AAUP experience with faculty unions and, to a lesser extent, graduate students (the Rutgers Council of AAUP Chapters), the Association believes that concerns of the administrations about asserted infringements of institutional academic freedom are misplaced.

B. National AAUP Policies on Faculty Unionization and Local AAUP Faculty Collective Bargaining Experience Recognize That Unionization Is Not Only Consistent With, But Enhances, Academic Freedom.

Academic administrations heralded the demise of academic freedom in the 1960s and 1970s, when faculty members initially began to organize unions. Administrators at

that time predicted that unions of faculty members would interfere with academic freedom. Actual experience by local AAUP chapters in faculty collective bargaining has refuted these predictions. In fact, faculty collective bargaining has yielded contractual protections for a number of professional values, including individual academic freedom. *See* David M. Rabban, "Is Unionization Compatible with Professionalism?," 45 INDUS. & L.R. REV. 97, 110 (Oct. 1991) (reviewing provisions affecting professional standards in collective bargaining agreements in a number of professions, including higher education faculty, and finding "substantial, unambiguous support for professional values in many agreements," which suggests "at a minimum, that unionization and professionalism are not inherently incompatible").

Based on national AAUP policy and local AAUP faculty union experience, the administrations' fear that collective bargaining threatens academic freedom is not just speculative, but wrong. Collective bargaining is not only compatible with, but often enhances, academic freedom.

1. AAUP Policy Recognizes that Collective Bargaining Is Consistent With Faculty Academic Freedom.

The Association's 1973 *Statement on Collective Bargaining* provides that, "[a]s a national organization which has historically played a major role in formulating and implementing the principles that govern relationships in academic life, the Association promotes collective bargaining to reinforce the best features of higher education." American Association of University Professors, *Statement on Collective Bargaining*, AAUP POLICY DOCUMENTS & REPORTS 217 (2001 ed.) (AAUP POLICY DOCUMENTS). It states that "[c]ollective bargaining is an effective instrument for achieving" and "securing" the objectives of the Association, including "to protect academic freedom."

To promote "the best features of higher education," the *Statement on Collective Bargaining* encourages Association chapters that engage in collective bargaining to strive to "obtain explicit guarantees of academic freedom and tenure in accordance with the principles and stated policies of the Association." *Id.*

2. Local AAUP Collective Bargaining Agreements Demonstrate that Faculty Unionization Can Protect and Promote Academic Freedom.

Some local chapters of the AAUP have significant experience organizing faculty members to bargain collectively. In 1965-66 the AAUP first began "extensive discussions" about the issue of faculty unionization. Philo A. Hutcheson, A PROFESSIONAL PROFESSORIATE: UNIONIZATION, BUREAUCRATIZATION, AND THE AAUP 145 (2000). In 1967 the faculty at Belleville Area College in Illinois became the first local AAUP collective bargaining chapter. *See* AAUP, "Breaking the News," 75 ACADEME: BULLETIN OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS 16 (May/June 1989) ("ACADEME").

In the joint, oft-cited *1940 Statement of Principles on Academic Freedom and Tenure*, AAUP and the Association of American Colleges explain that academic freedom gives teachers "full freedom in research and in the publication of the results" as well as "in the classroom [to] discuss[] their subject." AAUP POLICY DOCUMENTS at 3.[2]

[2] The entire academic freedom provision of the *1940 Statement* reads:

(a) Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution

Under the AAUP's 1973 *Statement on Collective Bargaining*, local AAUP chapters have successfully established "explicit guarantees of academic freedom" in their collective bargaining contracts. Some chapters for which there is a local AAUP bargaining representative refer to the *1940 Statement* and quote it extensively in their collective bargaining contracts.[3] Other collective bargaining agreements to which an

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(b) Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

(c) College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

Id. at 3-4.

[3] *See, e.g.*, Bard College (New York) (Art VIII) ("All teachers (whether Faculty or not) will enjoy academic freedom as set forth in the Association of American Colleges-American Association of University Professors' *1940 Statement of Principles on Academic Freedom and Tenure . . .*"); Bloomfield College (New Jersey) (Art. 3) ("The College and the Chapter accept the principles of academic freedom as defined in the *1940 Statement of Principles on Academic Freedom and Tenure . . .* formulated by the Association of American Colleges and the American Association of University Professors."); Curry College (Massachusetts) (Art. III) ("The College and the AAUP endorse the specific section on Academic Freedom from the document entitled *1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments.*"); Indian River Community College (Florida) (Art. XIX) ("The Chapter subscribes to the AAUP *1940 Statement of Principles and the Interpretive Comments of 1940 and 1970*."); Kalamazoo Valley Community College (Michigan) (Art. 3.54) ("The following excerpt is taken from the AAUP's *1940 Statement of Principles on Academic Freedom and Tenure*. . . ."); Kent State University (nontenured) (Art. III. § 2) (tenured) (Art. IV, § 2) ("As stated in the American Association of University Professors' *1940 Statement of Principles on Academic Freedom and Tenure. . . .*"); Regis University (Colorado) (Art. 11.1) ("Regis University affirms and is guided by the ideal that all members of the faculty, whether tenured or not, are entitled to academic freedom as set forth in the *1940 Statement of Principles on Academic Freedom and Tenure* of the

AAUP chapter is a party essentially adopt the *1940 Statement*, although not citing it, to define academic freedom.[4]

Such local AAUP collective bargaining agreements do not simply promote academic freedom, but make such protections legally enforceable. As former AAUP President Robert A. Gorman wrote in evaluating the initial ten-year effort by local AAUP chapters in collective bargaining: "[C]ollective bargaining agreements leave no doubt that essential AAUP principles of academic freedom, tenure, due process, peer review, nondiscrimination, and the like, can be rendered fully enforceable as part of the contract rules prevailing in court cases and arbitration proceedings." Gorman, *supra*, at 3a.

Moreover, such efforts to protect and promote academic freedom in higher education faculty collective bargaining contracts are not limited to AAUP. In 1976 then-AAUP President William W. Van Alstyne noted a trend that continues today:

> The presence of the Association in collective bargaining has also brought with it the flattery of widespread imitation: not only do our agreements reflect the enforceable contractualizing of the *1940 Statement* and related AAUP standards, but the other associations and unions have now reached the point where negotiation for recognition of AAUP standards is commonplace throughout collective bargaining in higher education.

William W. Van Alstyne, "The Strengths of AAUP," 62 AAUP BULLETIN 135, 137-38 (Aug. 1976).

By demonstrating that parties can negotiate a contract that does not infringe upon academic freedom, AAUP policy and local chapter practice support the Board's ruling in

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American Association of University Professors . . ."); University of Rhode Island (Art. 7.2) ("The Board and the University of Rhode Island unconditionally endorse the *1940 Statement*.").

[4] *See, e.g.*, Central State University (Ohio) (Art. 5.1); University of Cincinnati (Art. 2); Eastern Michigan University (Art. II).

NYU and the Regional Directors' rulings in *Brown University* and *Columbia University.* Collective bargaining does not undermine academic freedom:

> After nearly 30 years of experience with bargaining units of faculty members, we are confident that in bargaining concerning units of graduate assistants, the parties "can confront any issues of academic freedom as they would any other issue in collective bargaining."

NYU, slip op. at 4 (quoting *Boston Medical Center*, slip op. at 13). Local AAUP chapters that serve as unions protect and promote individual academic freedom through collective bargaining. So, too, may administrations protect and promote their educational decisionmaking in contract negotiations.

Contrary to the claims of the administrations and *amici*, the concerns of academic administrators will not be "force fit" into collective bargaining. *See Brief of Trustees of Boston University as Amicus in Support of Employer Brown University to the NLRB* 19 (Jan. 31, 2002). The collective bargaining process is capable of accommodating and adapting to the concerns of any industry or profession, and the academy is no exception. *See* William M. Weinberg, *Patterns of State-Institutional Relations Under Collective Bargaining, Faculty Bargaining, State Government and Campus Autonomy: The Experience in Eight States*, *in* PENNSYLVANIA STATE UNIVERSITY AND THE EDUCATION COMMISSION OF THE STATES REPORT 103 (Apr. 1976) ("The higher education 'industry' has adapted collective bargaining, as has every other industry, to match its own administrative structure, product and institutional needs, and relationships with unions."). Collective bargaining has accommodated faculty unionization, and it will continue to adapt to graduate assistant unionization.

C. Unionization of Graduate Students Does Not Violate Academic Freedom or Harm Faculty-Student Mentoring Relationships.

The administrations' argument that unionization by graduate assistants violates institutional academic freedom is refuted by the experience of the local AAUP Rutgers chapter and by recent research on the student-faculty mentoring relationship. In addition, national AAUP policy on graduate students supports unionization for those who are deemed employees.

1. AAUP Policy Promotes the Right of Graduate Students Who Are Employees to Bargain Collectively.

In recent years the collective bargaining rights of graduate assistants has emerged as an important policy issue for the AAUP. The AAUP has adopted policies supporting the right of students who are deemed employees by the Board to bargain collectively. These policies demonstrate that the leading association of faculty members in the United States does not view collective bargaining between unions of graduate assistants and university administrations as inconsistent with academic freedom or other fundamental values in higher education.

The Association has long recognized that graduate students are entitled to the protections of academic freedom: "Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time tenured and probationary faculty teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities." *1940 Statement*, AAUP POLICY DOCUMENTS 6.

In 1998 AAUP's Annual Meeting adopted the "Resolution on the Right of Graduate Students and Part-Time Employees to Choose Unionization." That resolution

extended AAUP's 1973 *Statement on Collective Bargaining* "to include graduate students . . . who perform instructional, administrative, or research services for compensation." *AAUP Supports Right of Graduate Students and Part-Time Employees to Choose Unionization*, AAUP Press Release (Nov. 17, 1998) (www.aaup.org/newsroom/press/pr11172.htm). The resolution affirmed "the right of all groups of employees at public and private colleges and universities to decide for themselves whether to negotiate their salaries, benefits, and working conditions. We believe all groups of employees have the right to bargain collectively by the way of union representation if they so choose." *Id*.

The 2000 AAUP Annual Meeting adopted a number of policies endorsing the position that graduate students who are employees have the right to unionize. The Association adopted the *Statement on Graduate Students*, which provides that "graduate student assistants should have the right to organize to bargain collectively . . . [and] [a]dministrations should honor a majority request for union representation." AAUP, *Statement on Graduate Students*, AAUP POLICY DOCUMENTS 268, 270. The *Statement* recognizes that "[g]raduate students not only engage in more advanced studies than their undergraduate counterparts, they often hold teaching or research assistantships. As graduate assistants, they carry out many of the functions of faculty members and receive compensation for these duties." *Id.*

National AAUP policies thus support the right of graduate students who are employees to unionize.

2. The Experience of the Rutgers Council of AAUP Chapters Indicates No Interference with Academic Freedom.

The sole bargaining unit in the United States that includes both full-time faculty and graduate student employees is at Rutgers, the State University of New Jersey. The Rutgers Council of AAUP Chapters was recognized as the statewide bargaining agent for full-time faculty in 1970. Teaching and graduate assistants were added to the unit in 1972. Currently, the unit includes approximately 2,500 full-time faculty members and approximately 1,700 teaching and graduate assistants.

While most provisions of the Rutgers collective bargaining agreement cover all unit members, some contract provisions—notably salary schedules, criteria and procedures for appointment and reappointment, and workload—differentiate between faculty and graduate assistants.

The collective bargaining agreement includes language, applicable to all unit members, that recognizes the principle of academic freedom. In the thirty years since the inclusion of teaching and graduate assistants in the bargaining unit, no disputes of any kind have arisen either in the grievance forum or in contract negotiations over any arguable conflict between academic freedom protections as they pertain to either faculty members teaching or graduate assistants. Nor have any significant disputes arisen with respect to the sometimes differing economic interests of members of the two groups encompassed by the bargaining unit.

Based on the experience of the Rutgers Council of AAUP Chapters, the Association believes that the unionization of graduate students indicates no interference with individual or institutional academic freedom.

3. Unionization of Graduate Assistants Does Not Interfere with the Mentoring Relationship.

The Columbia administration asserts that unionization will disturb the cooperative relationships between faculty mentors and their graduate student mentees. *Columbia University Request for Review to the NLRB* at 18. The evidence suggests to the contrary, however.

One administrative law judge (ALJ), upon hearing the claims of graduate students within the University of California system, ordered that the state's student employees attending public institutions be allowed to unionize. *Regents of the Univ. of California*, 20 PERC ¶ 27129 (1996). The ALJ explained that

> [t]he mentor relationship . . . is limited primarily to the relationship between a graduate student and a dissertation committee chair, or sometimes a committee member. Any impact upon that relationship . . . is virtually non-existent [because it is] . . . extremely rare for the same individuals to have been in both an employee-supervisor relationship and a student-faculty mentor relationship.

Id. at 386. The ALJ continued: "Even if evidence indicated that a large number of mentor relationships overlapped with employment relationships, extending coverage would not damage those relationships. There is nothing inherent in collective bargaining that precludes a supervisor from being a mentor." *Id.*

A recent study makes clear that graduate assistant unions do not inhibit professor-graduate student relations. Gordon J. Hewitt, "Graduate Student Employee Collective Bargaining and the Educational Relationship Between Faculty and Graduate Students," 29 J. COLLECTIVE NEGOTIATIONS PUB. SECTOR 153 (2000). The study, which surveyed a random sample of faculty members at five universities where graduate assistant unions had existed for at least four years, reveals that professors generally do not believe that

their relationships with graduate students have suffered because of collective bargaining. The five universities are the State University of New York at Buffalo and the Universities of Florida, Massachusetts, Michigan, and Oregon. *Id.* at 157.[5]

Close to 90 percent of the survey participants asserted that bargaining had not kept them from forming close mentoring relationships with their graduate students. *Id.* at 161. Perhaps even more significantly, over 90 percent indicated that collective bargaining had not inhibited their ability to advise or instruct graduate students. *Id.* And 95 percent of those surveyed believed that collective bargaining had not inhibited the free exchange of ideas between faculty members and students. *Id.* "[T]he results show [that] faculty . . . support the right of graduate students to bargain collectively, and believe collective bargaining is appropriate for graduate students . . . .[B]ased on their experiences, collective bargaining does not inhibit [professors'] ability to advise, instruct, or mentor their graduate students." *Id.* at 164. Dr. Hewitt observed that in their open-ended comments, faculty members never characterized the effect of bargaining on their "educational relationships" with students as "negative." *Id.* Nor did they consider bargaining to be an "educational hindrance." *Id*. And so, "[t]he faculty consider their relationships with graduate students a sacred trust and do not allow bureaucratic or political encumbrances to interfere with that trust." *Id.*

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[5] Like Columbia and Brown, these five institutions are included in the Carnegie classification "Doctoral/Research Universities/Extensive." The category is defined as "[i]nstitutions [that] typically offer a wide range of baccalaureate programs, and . . . are committed to graduate education through the doctorate. They award 50 or more doctoral degrees per year across at least 15 disciplines." HIGHER EDUCATION DIRECTORY (Higher Education Publications, Inc. 2002). In addition, all of these institutions, except the University of Massachusetts, are members of the prestigious Association of American Universities, which is an "association of 63 leading research universities in the United States and Canada." *See* www.aau.edu/aau/members.html.

Another recent study by Daniel J. Julius and Patricia J. Gumport of Stanford University found that in their analysis of interview data and contracts that

> no conclusive evidence [suggests] that collective bargaining in and of itself is compromising the student-faculty relationship in general, or the willingness of faculty to serve in a mentoring capacity. Moreover, our data suggest that the clarification of roles and employment policies can enhance mentoring relationships.

Daniel J. Julius & Patricia J. Gumport, "Graduate Student Unionization: Catalysts and Consequences," REVIEW OF HIGHER EDUCATION 20 (forthcoming). Furthermore, the authors "conferred with labor relations practitioners who could not identify any sustained trends that suggested the student-faculty relationship could evolve into an employee-supervisor relationship, where faculty may be reluctant to speak candidly with students – for fear of grievances being filed." *Id.* The authors conclude that "fears concerning the undermining of mentoring relationships (just as those concerning peer review, professionalism, and the like when full time faculty organized) appear to be without foundation or premature to say the least." *Id.* at 31.

In summary, no evidence shows or even suggests that graduate assistant unionization interferes with the mentor-mentee relationship.

D. State Courts Have Found Collective Bargaining by Student-Employees Compatible with Institutional Academic Freedom.

Like the Board in *NYU*, state courts have found collective bargaining for student-employees compatible with institutional academic freedom. *See, e.g., Regents of the University of California*, 715 P.2d at 590; *Regents of the University of Michigan*, 204 N.W.2d at 218. While these state court cases involve housestaff, not graduate assistants, there are significant similarities between graduate assistants and graduate student housestaff, including the fact that in both types of cases administrations have argued that

allowing unionization of student-employees violates their academic freedom. *See* Grant Hayden, "'The University Works Because We Do': Collective Bargaining Rights for Graduate Students," 69 FORDHAM L. REV. 1233, 1244 (2001) ("Although the life of an intern or resident is unlike the life of a graduate student, the legal issues surrounding the status of housestaff in teaching hospitals are similar. . . . Cases addressing the bargaining rights of housestaff often include extended discussions of the bargaining rights of student employees."). Moreover, the courts' reasoning about why institutional academic freedom concerns are best dealt with through collective bargaining provides further support for the Board's well-reasoned *NYU* decision.

The process of contract negotiations can often accommodate the special concerns of parties, including those in the academic community. As the U.S. Supreme Court opined in *NLRB v. Jones & Laughlin Steel Corp*., 301 U.S. 1, 45 (1937):

> The Act does not compel agreements between employers and employees. It does not compel any agreement whatever . . . The theory of the Act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the Act in itself does not attempt to compel.

In the end, the administrations' academic freedom concerns are "premature" because they can be resolved through collective bargaining. *See Regents of the University of California*, 715 P.2d at 605; *see infra* pages 26-27 (discussing recent collective bargaining agreement between NYU and the graduate assistant union, UAW); *see also* Martin H. Malin, "Student Employees and Collective Bargaining," 69 KY. L.J. 1, 27-28 (1980) (asserting that "[u]nion organizing campaigns and collective bargaining by student employees at state institutions indicate that the NLRB's fears of student misuse of bargaining power are misplaced"). Ultimately, the administrations are voicing concerns

about the scope of bargaining, "rather than the applicability of the NLRA to student employees." *See id.; see also* Joshua Rowland, "Note: Forecasts of Doom: The Dubious Threat of Graduate Teaching Assistant Collective Bargaining to Academic Freedom," 42 B.C.L. REV. 941, 965 (2001) (arguing that "what issues may be bargained over is a matter of the scope of bargaining, rather than representation, and, therefore, cannot serve to exclude a whole class of employees from the protections of the Act"). Therefore, the administrations' reassertion of institutional academic freedom concerns in *Brown University* and *Columbia University*, concerns which were correctly rejected by the Board in *NYU*, should not be revisited.

State courts have ruled that institutional concern about academic freedom should be decided on a case-by-case basis when determining the scope of bargaining, not in deciding whether students are employees. In *Regents of the University of California*, 715 P.2d at 590, the California Supreme Court ruled that interns and residents were employees under state law. In so ruling, the court rejected the institution's academic freedom argument, which is similar to that raised by the administrations in *Columbia University* and *Brown University.* The court opined:

> The University asserts that if collective bargaining rights were given to house staff the University's educational mission would be undermined by requiring bargaining on subjects which are intrinsically tied to the educational aspects of the residency programs. . . . [T]he University's argument is premature. The argument basically concerns the appropriate scope of representation under the Act. . . . Such issues will undoubtedly arise in specific factual contexts in which one side wishes to bargain over a certain subject and the other side does not. These scope-of-representation issues may be resolved by the Board when they arise. . . .

Id. at 605.

Similarly, in *Regents of the University of Michigan*, 204 N.W.2d at 218, the Michigan Supreme Court considered the scope of bargaining between the administration and a group of interns, residents, and post-doctoral fellows at the University of Michigan Hospital under Michigan's labor law and its state constitution, which provided for the Board of Regents' autonomy. The court held that, "[b]ecause of the unique nature of the University of Michigan . . . the scope of bargaining by the Association may be limited if the subject matter falls clearly within the educational sphere." *Id.* at 224. The court continued:

> For example, the Association clearly can bargain with the Regents on the salary that their members receive since it is not within the educational sphere. While normally employees can bargain to discontinue a certain aspect of a particular job, the Association does not have the same latitude as other public employees. For example, interns could not negotiate working in the pathology department because they found such work distasteful. If the administrators of medical schools felt that a certain number of hours devoted to pathology was necessary to the education of the intern, our Court would not interfere since this does fall within the autonomy of the Regents [under the state constitution.] Numerous other issues may arise which fall between these two extremes and they will have to be decided on a case by case basis.

Id.

Thus, when parties cannot reach agreement, the Board, like state courts, can undertake an inquiry to determine the appropriate scope of bargaining. As Professor Malin wrote:

> If the parties are unable to agree on whether a particular matter should be subject to the bargaining process, the appropriate agency or court may balance the impact of the issue on the terms and conditions of employment against the impact of the issue on matters of educational policy to determine whether it should be a subject of mandatory collective bargaining. . . . A similar balancing process in private university negotiations is not inconsistent with national labor policy.

Malin, *supra*, 69 KY. L.J. at 28-29; *see also* Bernhard Wolfgang Rohrbacher, "After *Boston Medical Center*: Why Teaching Assistants Should Have the Right to Bargain Collectively," 33 LOY. L.A. L. REV. 1849, 1911 (2000) (noting that different state courts "all have been able to 'draw the line' somewhere" in determining mandatory bargaining issues in education, such as class size, and so, "[b]y the same token, there is no reason to believe that the NLRB will not equally be able to 'draw the line'").

In fact, many issues of concern to graduate assistants fall far outside the ambit of an institution's educational decisionmaking, such as the provision of health insurance, the level of stipends, and, for some, financial assistance for child care. *See Regents of the University of California*, 715 P.2d at 604 (noting substantial employment concerns affecting housestaff, which are similar to those of graduate assistants, such as salaries, fringe benefits, and hours, that were "manifestly amenable to collective negotiations"); Julius & Gumport, *supra*, REVIEW OF HIGHER EDUCATION at 17 ("[O]ur review of graduate student labor agreements revealed these unions have . . . focused on higher salaries, job security, and grievance mechanisms."); Malin, *supra*, 69 KY. L.J. at 27-28 (noting that "[w]ages and fringe benefits do not involve questions of academic policy and clearly would be matters of mandatory collective bargaining," and reviewing early collective bargaining agreements of student employees at state institutions to find that they emphasize "traditional economic issues," not academic ones); Douglas Sorrelle Streltz & Jennifer Allyson Hunkler, "Teaching or Learning: Are Teaching Assistants Students or Employees?," 24 J.C. & U.L. 349, 375 (1997) ("Students' objectives are to bargain collectively over economic and employment conditions such as wages, health benefits, and hours, not over academic matters."); "Recent Case: Labor Law--NLRB

Holds that Graduate Assistants Enrolled at Private Universities are 'Employees' Under the National Labor Relations Act," 114 HARV. L. REV. 2557, 2559-60 (2001) ("[T]he number of student sections that a teaching assistant must lead and the amount of compensation per hour or per course are clearly 'terms and conditions of employment' that will become subjects of bargaining. Just as clearly, degree requirements and student evaluation are issues that should be left fully under faculty control."). As one former graduate assistant, who was a founding member of the Graduate Employees' Union at the University of Illinois at Urbana-Champaign, stated: "[A]cademic issues are mostly ancillary to the subject of graduate-employee unions. Unions bargain over terms and conditions of employment; they don't mediate academic matters." William Vaughn, "Apprentice or Employee? Graduate Students and Their Unions," ACADEME 43, 48 (Nov./Dec. 1998).

The principle that parties can often resolve their conflicts through collective bargaining, including in the academy, is borne out in the first contract between NYU and the UAW. The parties recently agreed to a collective bargaining agreement that, according to the administration, clearly protects the administration's academic concerns. *Statement by NYU Vice President Robert Berne on Reaching an Agreement with the UAW Enabling the University to Proceed to the Bargaining Table,* NYU Press Release (Mar. 1, 2001) (www.nyu.edu/publicaffairs/newsreleases/b_BERNE_UAW.shtml). The "Management and Academic Rights" provision of the collective bargaining contract states:

> Except as otherwise provided in this Agreement, the Union agrees that the University has the right to establish, plan, direct and control the University's missions, programs, objectives, activities, resources, and priorities; to establish and administer procedures, rules and regulations,

> and direct and control University operations . . . to determine or modify the number, qualifications, scheduling, responsibilities and assignment of graduate assistants; to establish, maintain, modify or enforce standards of performance, conduct, order and safety; to evaluate, to determine the content of evaluations, and to determine the processes and criteria by which graduate assistants' performance is evaluated; to establish and require graduate assistants to observe University rules and regulations; to discipline or dismiss graduate assistants; to establish or modify the academic calendars, including holidays and holiday scheduling; to assign work locations; to schedule hours of work; to recruit, hire, or transfer; to determine how and when and by whom instruction is delivered; to determine in its sole discretion all matters relating to faculty hiring and tenure and student admissions; to introduce new methods of instruction; or to subcontract all or any portion of any operations; and to exercise sole authority on all decisions involving academic matters.

Complete Proposal of NYU to International Union, UAW and Its Local 2110 (Jan. 28, 2002) (www.nyu.edu/publicaffairs/gradissues/agreement/uawnyuproposal.pdf). The provision also includes the following "academic freedom" clause: "Decisions regarding who is taught, what is taught, how it is taught and who does the teaching involve academic judgment and shall be made at the sole discretion of the University." *See Sweezy*, 354 U.S. at 263 (1957) (Frankfurter, J., concurring) ("[T]he four 'essential freedoms' of a university [are] . . . 'to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.'") (citations omitted). Furthermore, the collective bargaining agreement includes a "no strike" provision.

Collective bargaining has accommodated, and can continue to accommodate, the special concerns of the academic community. Accordingly, the Board found in *NYU*, as have the highest courts in California and Michigan, that graduate assistants should not be excluded from labor law protections based on unfounded assertions that such collective

bargaining will interfere with their academic freedom. *NYU*, slip op. at 4; *see also Boston Medical Center*, slip op. at 13.

II. TEACHING AS AN ACADEMIC REQUIREMENT FOR GRADUATE ASSISTANTS SHOULD NOT, ON ITS OWN, REQUIRE A FINDING THAT GRADUATE ASSISTANTS ARE NOT EMPLOYEES.

Neither the Act nor Board precedent, including *NYU*, supports the denial of statutory rights to employees simply because the services performed are required as part of an educational program. Accordingly, just as the administrations' academic freedom concerns do not constitute a public policy reason to exclude graduate assistants from NLRA protections, neither should an academic requirement for graduate assistants to teach preclude the Board from determining them to be employees under the Act.

In *NYU* the Board found that graduate assistants were "employees" under the Act and, therefore, could unionize: "[T]he fulfillment of duties of a graduate assistant requires performance of work, controlled by the Employer, and in exchange for consideration." *NYU*, slip op. at 2. In so ruling, the Board did not state that graduate assistants who teach to fulfill a degree requirement necessarily lose their status as employees. Rather, the Board found that even if their work is "primarily educational," graduate assistants may be employees if they perform services for the administration in exchange for compensation: "[N]otwithstanding any educational benefit derived from graduate assistants' employment, we reject the premise of the Employer's argument that graduate assistants should be denied collective bargaining rights because their work is primarily educational." *Id.* at 3.

The administrations contend that *NYU* is distinguishable from their cases because academic requirements exist for their graduate assistants to teach and, therefore, their

graduate assistants are not employees. *Brown University Request for Review to the NLRB* at 8; *Columbia University Request for Review to the NLRB* at 18. The Board, however, in determining whether graduate assistants are employees under the Act, should carefully examine whether the characterization by the administrations of teaching as an academic requirement simply masks the economic realities of the relationship, because a graduate assistant can be both a student and an employee. *See WBAI Pacifica*, 328 N.L.R.B. No. 179, at *3 (ruling that unpaid staff are not employees under Section 2(3) of the Act where "there is no economic aspect to their relationship with the employer") (emphasis added).

The definition of "employee" under Section 2(3) of the NLRA is broad. *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 891-92 (1984) (ruling that "the breadth of Section 2(3) is striking" and, therefore, undocumented aliens "plainly come within the broad statutory definition of 'employee'"); *NLRB v. Town & Country*, 516 U.S. 85, 90 (1995) (concluding that "[t]he phrasing of the Act seems to reiterate the breadth of the ordinary dictionary definition for it says, '[t]he term "employee" shall include any employee'"). The Board carefully examines employer characterizations of an individual's employee status on a case-by-case basis. *See, e.g., NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001) (nurses as supervisors); *Yeshiva University*, 444 U.S. at 672 (faculty as managers). The Board should similarly examine the assertion that graduate students who otherwise would qualify as employees cease to be employees simply because their work is declared by administrators to be academically required. *See Shephard's Uniform and Linen Supply*, 274 NLRB 1423 (1985) (ruling, in part, that students performing maintenance work for academic credit as part of a high school vocational educational program are employees under the Act).

In *Boston Medical Center*, the Board rejected the argument that residents and interns were not employees, even though their work was required to complete the educational requirements for certification in a medical specialty. That the housestaff obtains "educational benefits" from their employment, the Board ruled, "is not inconsistent with their employee status": "Their status as students is not mutually exclusive of a finding that they are employees." Slip op. at 45 (emphasis added). The Board noted that "[i]t has never been doubted that apprentices are statutory employees. . . ." *Id.* (citations omitted). The Board accurately observed, "[m]embers of all professions continue learning throughout their careers" and, therefore, a learning component should not preclude the Board from determining that a student may be an employee. *Id.* at 45-46; *see also Brown University* at 36 ("I conclude that merely because the Board stated in *NYU* that the lack of academic credit for graduate assistant work 'highlighted' the fact that this work was not solely in pursuit of education, it does not follow that . . . receiving academic credit for this service automatically makes a graduate student a non-employee."); *Columbia University* at 31 (Even if the Regional Director were to find that "Columbia's graduate students have an academic requirement to teach, this factor, by itself, should not be determinative with respect to whether they enjoy employee status under the Act."); *see also Tufts University,* 1-RC-21452 (Mar. 29, 2002) (Graduate assistants can be "entitled to collective-bargaining rights, even though they may simultaneously be deriving educational benefits from their employment.")

For the Board to accept the assertion that an academic requirement to teach inherently precludes employee status for graduate assistants would create an incentive for higher education administrations to structure programs based not on academic needs, but,

rather, on avoiding the possibility of unionization. Furthermore, the Board's acceptance of the administrations' characterization of teaching as an academic requirement as the basis for precluding employee status would undermine the Board's consistently broad interpretation of "employee" under Section 2(3) of the NLRA. *See Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992) (cautioning against disenfranchisement of individuals who might be entitled to NLRA protections); *see also* Malin, *supra*, 69 KY. L.J. at 26 (arguing that the Board should only exclude a particular type of employee based on "considerations of national *labor* policy," but to exclude coverage of student-employees on the basis of potential interference with institutional academic freedom is a decision based on national *education* policy) (emphasis added).

CONCLUSION

The Board should not disturb its well-reasoned and factually grounded *NYU* decision, and it should affirm the Regional Directors' rulings in *Columbia University* and *Brown University*, which rely on that decision. The administrations' speculations and fears that collective bargaining inherently infringes upon their institutional academic freedom are unconvincing and inconsistent with precedent since *Associated Press* in the 1930s. The First Amendment is not a barrier to the vindication of federal statutory rights such as those contained in the NLRA. AAUP policy, local faculty and graduate assistant union experience, existing research, and state court decisions, provide ample support for the Board's principled ruling in *NYU* that collective bargaining is not inconsistent with institutional academic freedom. In addition, the Board should not exclude graduate

assistants from NLRA protections merely because administrations' characterize at least some of those economic relationships as academically required.

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