

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

UNIVERSITY OF PENNSYLVANIA

Employer

and

Case 4-RC-20353

GRADUATE EMPLOYEES TOGETHER-
UNIVERSITY OF PENNSYLVANIA

Petitioner

**REGIONAL DIRECTOR'S SUPPLEMENTAL
DECISION AND ORDER**

I. PROCEDURAL HISTORY

On November 21, 2002, a Decision and Direction of Election issued in this case, directing an election among certain graduate students serving as Teaching Assistants and Research Assistants at the University of Pennsylvania. The Employer filed a Request for Review of this Decision. On February 26, 2003, the election was conducted and the ballots were impounded, and on May 14, 2003, the Board granted the Request for Review. Thereafter, while the Request for Review was pending, on July 13, 2004, the Board issued a decision in *Brown University*, 342 NLRB No. 42 (2004), in which it overruled *New York University*, 332 NLRB 1205 (2000), and found that graduate students engaged as teaching and research assistants are not employees within the meaning of Section 2(3) of the Act. In this regard, the Board found that graduate student assistants “are primarily students and have a predominantly academic rather than economic relationship with their university.”

By Order dated July 16, 2004, the Board remanded the present case for further consideration in light of the *Brown* decision. On July 21, I issued a Notice to Show Cause why this petition should or should not be dismissed. Both parties filed responses to the Notice to Show Cause.

II. POSITIONS OF THE PARTIES

The Petitioner contends that *Brown* was wrongly decided and that the Board should not have overruled *New York University*, supra. In this connection, the Petitioner asserts that the Act defines the term “employee” very broadly and that graduate students are not encompassed by any of the statutory exclusions from this definition. The Petitioner also urges that the graduate

students at the University of Pennsylvania provide significant services to the University under the direct control of faculty supervisors and are compensated for these services. Thus, citing *Boston Medical Center*, 330 NLRB 152 (1999), the Petitioner contends that they satisfy the Board's criteria for finding employee status.¹ Finally, the Petitioner contends that the Act only requires the existence of an economic relationship, not that it be the exclusive or even primary relationship, in order for the graduate students to meet the statutory definition of employee. In sum, the Petitioner urges that contrary to *Brown* graduate students should be found to be employees while performing teaching and research activities on behalf of the University.

The Employer contends that the petition should be dismissed based on the Board's finding in *Brown* that graduate student assistants are not employees within the meaning of the Act.

III. ANALYSIS

In the *Brown* decision, the Board expressly reversed *New York University* and rejected the contention that since the statute itself does not explicitly exclude students, the graduate student assistants fall within Section 2(3)'s definition of "employee." The Board found that the petitioned-for individuals were primarily students and that the services that they provided "cannot be divorced from the other functions of being a graduate student." *Brown University*, supra, slip op. at 7. The Board further found that the graduate students' compensation was not "consideration for work" but was financial aid to students. *Brown University*, supra, slip op. at 6. Moreover, the Board concluded that even assuming arguendo that the graduate students were employees within the meaning of the Act, the Board would exercise its discretion to find that they should not be accorded collective bargaining rights because it would not effectuate national labor policy to grant them these rights. *Brown University*, supra, slip op. at 10.

Thus, in its response to the Notice to Show Cause, the Petitioner raises arguments fully considered and rejected by the Board in *Brown*. In these circumstances, I am bound by the Board's decision in *Brown* finding that graduate student assistants are not employees under the Act, and I shall therefore dismiss the petition.

IV. ORDER

As the unit requested by the Petitioner is comprised of graduate student assistants who are not employees within the meaning of the Act, **IT IS HEREBY ORDERED** that the petition in this case be, and it hereby is, dismissed.

¹ In *Brown*, the Board stated that it was expressing no opinion regarding the Board's decision in *Boston Medical Center*. Slip op. at 1, n. 4.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by E-mail. For details on how to file a request for review by E-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on **September 9, 2004**.

Signed: August 26, 2004

at Philadelphia, Pennsylvania

/s/
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four