UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

Trustees of Columbia University in the City of New York,
Employer

and

Case No. 02-RC-225405

Columbia Postdoctoral Workers and United Automobile, Aerospace and Agricultural Implement Workers of America (CPW-UAW),
Petitioner

DECISION AND DIRECTION OF ELECTION

Columbia University (Columbia or the Employer) is a New York corporation that operates a private university in New York, NY. On August 10, 2018, Columbia Postdoctoral Workers and United Automobile, Aerospace and Agricultural Implement Workers of America (CPW-UAW)(the Petitioner) filed the petition in this matter seeking a unit of postdoctoral researchers at Columbia. The unit sought by the Petitioner, as amended,[1] is:[2]

> Included: All postdoctoral researchers who have received a doctorate or its professional equivalent who provide services to the university, including Postdoctoral Research Scientists, Postdoctoral Research Scholars, Postdoctoral Research Fellows, Associate Research Scientists, and Associate Research Scholars.
>
> Excluded: All other employees, including Postdoctoral Clinical Fellows and Postdoctoral Residency Fellows, guards and supervisors as defined in the Act.

The Employer argues that the Postdoctoral Research Scientists/Scholars, and Postdoctoral Research Fellows do not share a community of interest with the Associate Research Scientist/Scholars because the former two groups are "trainees" whose ability to conduct independent research does not approach that of their senior colleagues. Further, the Employer argues that the Postdoctoral Research Fellows are not employees as defined by Section 2(3) of the Act. Alternatively, the Employer argues that if the Fellows are employees, they are not employees of Columbia, because their research is funded independently, from external sources.

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[1] At hearing, I granted Petitioner's motion to amend the petition to specifically exclude Postdoctoral Clinical Fellows and Postdoctoral Residency Fellows. Petitioner also moved to delete the language, "or anyone with substantially equivalent qualifications who conducts similar work". The Employer had no objection. I hereby grant that amendment as well. Finally, the Employer requested an administrative review of the showing of interest; I am satisfied that the petition is supported by a requisite showing.

[2] The Petitioner will proceed to an election in any other unit found appropriate by the Regional Director.

Hearing Officer Matthew Murtagh conducted the hearing in this matter, during which the parties were invited to present their positions and supporting evidence regarding the appropriateness of the petitioned-for unit. I allowed the parties the opportunity to submit post-hearing briefs.[3]

Having duly considered the parties' positions, as raised during the hearing and in their respective post-hearing briefs, I find, based on the record and consistent with relevant case law, that all of the individuals in the petitioned-for classifications are employees under Section 2(3) of the Act. Further, based on an analysis of the Board's community-of-interest factors, I conclude that a unit of the petitioned-for employees is appropriate.

Accordingly, I am directing an election in the unit described below.

FACTS

The Petitioned-for Unit

The employees that the Union seeks to represent are relatively recent recipients of doctoral degrees, who are conducting lab experiments or other research at Columbia. Those in the "Scientist" classifications hold degrees in natural sciences, biomedical science, or engineering fields, while those in the "Scholar" classifications hold degrees in humanities or the social sciences.[4] Fellows may be in any of these disciplines. None of the individuals are currently working toward degrees as part of their job classification.

All of the petitioned-for classifications are considered to be Officers of Research of the University (as opposed to Officers of Instruction). Officers of Research are subdivided into Professional Officers of Research, Postdoctoral Officers of Research, and Staff Officers of Research. The proposed unit includes the most junior of the Professional Officers of Research and two of the four of the Postdoctoral Officers of Research, as indicated in bold below:

Professional Officers of Research

- Senior Research Scientists/Scholars
- Research Scientists/Scholars
- **Associate Research Scientists/Scholars ("Associates")**

Postdoctoral Officers of Research

- **Postdoctoral Research Scientists/Scholars ("Postdocs")**
- **Postdoctoral Research Fellows ("Fellows")**
- Postdoctoral Clinical Fellows

[3] I did not admit evidence on employee status of the postdoctoral researchers in the proposed unit based on the Employer's theory that they are akin to "housestaff" positions in *Cedars-Sinai Medical Center*, 223 NLRB 251 (1976) and *St. Clare's Hospital and Health Center*, 229 NLRB 1000 (1977). As the Employer acknowledges, those cases were overruled in *Boston Medical Center*, 330 NLRB 152 (1999), and I am bound by extant law.

[4] No evidence regarding the specific working conditions of "Scholars" was adduced in the record. No party contends that "Scholars" do not share a community of interest with "Scientists."

- Postdoctoral Residency Fellows

No party contends that any excluded classification should be added to the proposed unit. Regarding Postdoctoral Clinical Fellows and Residency Fellows, the record reflects that they perform direct patient care, unlike all other classifications mentioned above.

The Role of Principal Investigators ("PIs")

The work of the researchers in the proposed unit is typically conducted pursuant to, and as described in, grants obtained by Principal Investigators ("PIs") who are senior scientists and scholars. The PIs write grant proposals to private and public entities, typically the NIH, to fund experiments in their labs. The funding is awarded to Columbia for the proposed research. The PIs have overall responsibility for all the research conducted by the researchers and other staff in their labs, and ensure that all lab work is in compliance with applicable laws.

No grants were offered into evidence. Testimony, however, indicates that the grants describe the research projects in detail, including funding allotments for different levels of researchers and other lab workers who are needed to fulfill the terms of the grant. Specific responsibilities for particular aspects of experiments may be delineated in the grant document or determined by the PI. As described more fully below, the work of Postdoctoral Research Fellows is described in their Fellowship, which in some instances mirrors a description under a broader grant for work in the lab.

Associates, Postdocs, and Fellows all discuss their work with their PIs on schedules specific to the particular labs and PIs. There is no evidence indicating that Postdocs or Fellows have more frequent or regular meetings with their PIs than do Associates. The work of PIs, and that of the Associates, Postdocs and Fellows who work with them, furthers the research mission of the University. The intellectual property developed by anyone in any of these classifications is the property of Columbia.

The Work Performed by the Petitioned-for Classifications

The Employer's Director of the Office of Postdoctoral Affairs Ericka Peterson stressed that postdoctoral work is temporally limited, is not a "career," and is characterized by mentoring from a PI. However, it is clear that in their daily work environments, Postdocs and Fellows are operating independently to a similar degree as Associates. Postdocs, Fellows, and Associates work alongside each other in their labs, performing experiments and sharing the progress of their research with each other at regular lab meetings. All publish papers with their PIs.

Similarly, the Employer's Executive Vice President for Research Dr. Graham Michael Purdy testified that the research classifications in the proposed unit are at different stages of their careers, with postdocs being "primarily about career building." However, regarding their actual work in the lab, Purdy testified that Postdocs and Fellows work independently, as do Associates, and that the Associate classification does not indicate that a researcher has a higher level of independence than a Postdoc or Fellow:

> I would not say in general that Associate Research Scientists are more independent than postdocs. I use postdoc as a shorthand for both scientists and fellows because associate research scientists are doing a job under the direction of the PI. The postdoc is doing independent research. As part of the – you know, as part of the overall activity in the lab. ... in general, I would not agree that there's an increase in independence as you go through those [classifications]. I mean there's certainly more independence of a postdoc than there is of a graduate research assistant, absolutely. But from a postdoc to an Associate an increase in independence, I'm not sure that would be generally – generally true.

Associate Manu Vanaerschot's experience illustrates Dr. Purdy's summary. Vanaerschot works in the lab of PI David Fidock, in the Department of Microbiology and Immunology. He was initially appointed as a Postdoc starting in March 2015, with an anticipated tenure of three years working on a specified research project involving malaria drugs. The 15 members of his PI's lab include three Associates, four Postdocs, and several others working in classifications which are not at issue, including as lab managers, graduate assistants, and data analysts. The PI divides the research of the lab among those working; neither Vanaerschot nor other staff of the lab are at liberty to assign more junior coworkers to assist with projects.

Most of Vanaerschot's time is spent doing experiments and analyzing results. All the researchers in the lab are focusing on different aspects of the same project. They are variously working with resistance parasites, defining drug targets, examining the effect resistance parasites have on current treatments, all within a clearly outlined research project. There is a lot of collaboration among the lab staff. Vanaerschot worked with another Associate to develop his current experiment. Postdocs and Associates present their work on a rotating basis at weekly lab meetings.

Two years into this appointment as Postdoc, Vanaerschot had an article accepted for publication in a research journal. This credential prompted discussions with his PI, who promoted him to the position of Associate in December 2017. He received a salary increase with the promotion, but otherwise his working conditions remained the same as when he was a Postdoc. He continued to work on the same research project described in his original appointment letter.

Vanaerschot explained that his level of independence in his lab did not change when he was promoted from Postdoc to Associate. His lab does not feature any hierarchy between Postdocs and Associates. They keep the same daily schedule and perform similar tasks. Variations in the types of work are dependent on their projects rather than their job classifications -- some may be performing more data analysis on computers while others perform lab work, with any researcher shifting between these tasks in both directions according to the stage of their experiments.

The testimony of Fellow Tulsi Patel demonstrates that the work of Fellows is likewise quite similar, on a daily basis, to that of Postdocs and Associates. Patel works in the lab of PI Dr. Hynek Wichterle in the Department of Pathology and Cell Biology. Also in the lab are a Postdoc, an Associate, and graduate and technical workers. They all are conducting experiments related to

the PI's research into motor neurons related to ALS. These include studying timing in motor neurons derived from human and mouse cells, and growing motor neurons with and without ALS mutations to see how they respond to drugs. Patel speaks almost daily with her PI about her work. She also attends weekly lab meetings which are held with two other labs, at which the various researchers in the labs present their results so that all of the researchers are able to keep track of developments.

Patel has worked in PI Wichterle's lab since June 2016. When she was originally offered a position in the lab, Patel was assured by the PI that he had funds to cover her appointment as a Postdoc. But, the two agreed she would nevertheless seek fellowship funding. She applied for a fellowship that was part of a grant already awarded to Columbia, which allowed Columbia to select the particular researchers funded thereunder. Her application was reviewed by a senior researcher at Columbia. Patel was granted a Fellow appointment in Wichterle's lab to work with that fellowship money on the research they had previously agreed she would pursue.

When that fellowship ended in June 2017, Patel was appointed as a Postdoc, in which capacity she continued her work on the same project. This interlude lasted three months, at which point she was granted another fellowship. For this second fellowship, she applied directly to NIH. However, the application included an "institutional support" section in which she specified that she would be conducting her research in Wichterle's lab at Columbia. Thus, the application was based on her being at Columbia in the lab where she had been working. She submitted her application to the Employer's Grants Department, which ensures all documentation is in proper order (but does not review the substance of the research proposal) before it is submitted. She did not personally draft the budget part of her application, which was handled by Columbia personnel.

The grants which funded Patel's fellowships are "training grants." There are apparently other types of grants which can fund Fellows, but no specific record evidence was adduced regarding the different types of grants which may lead to an appointment as a Fellow. Training grants in particular are not transferrable between institutions; they are awarded to institutions based on the nature of the work to be performed, which fits with the specified lab at the institution. Patel testified that her grant application would need to be re-submitted and re-reviewed with an eye to new information about the alternate institution if she wished to move outside Columbia.

Patel's transitions between Fellow and Postdoc appointments had no impact on her daily research tasks, or on her relationships with her PI and other staff in the lab.

Hiring and Tenure

Appointments to all classifications in the proposed unit are ultimately made by the President, on the advice of the Provost, for a one-year term. Appointments to Postdoc and Fellow positions may be renewed for a total of three years, with possible rare extensions of up to five years to complete a research project, with permission of the Provost. These limitations apply to total time in either or both of the Postdoc and Fellow classifications; individuals appear to switch back and forth between the two classifications with some regularity. Postdocs who require

additional periods of appointment beyond the limitations may be promoted to the rank of Associate. There is no specified limit to re-appointments for Associates. As noted above, the Associate position is a "Professional" classification rather than a "Postdoctoral" one and is generally expected to last longer than the typical postdoctoral appointment. There is no record evidence indicating an average number of years an Associate remains in that appointment at Columbia. Executive Vice President for Research Dr. Purdy estimated that an Associate would be "potentially staying for five to ten years, maybe even longer, getting promoted to a research scientist."

In all cases, PIs determine who will be working in their labs, including Associates, Postdocs, and Fellows. Selections in all cases are subject to review by the Department Chair and the Dean or appropriate Vice President. Appointment letters for all of the petitioned-for classifications include a description of the research to be performed which is authored by the PI for the lab. However, the hiring process for the classifications at issue vary, as to some degree do the salaries and benefits, which are discussed below.

Candidates may demonstrate initial interest in a Postdoc appointment by responding to a posting on a web site or in a journal or reaching out to a PI to express interest. The candidate will apply and submit a *curriculum vitae*, i.e., qualifications, which is reviewed by the PI and the Department Chair. Postdoctoral appointments are not formally posted for open competition in the same manner as Associate appointments, and not subject to EEOC or other regulations for competitively-bid job openings. However, the Faculty Handbook explains that while procedures for selecting postdocs vary from department to department, in most cases they are chosen "through an open, competitive process and a comparative evaluation of the qualifications of those who apply." Where an external granting agency selects a postdoc, the selection is, "subject to confirmation by the University." The University also has a diversity program that requires consideration of diversity in all appointments, regardless of whether the hiring is subject to EEO regulations.

Associate candidates generally have a few years of postdoc experience. Typically, this experience would be as a Postdoc and/or Fellow. Of the approximately 1,000 Associates in the proposed unit, more than half previously held appointments as Postdocs or Fellows at Columbia.

While applicants for Associate appointments must apply after a formal competitive job posting, such postings serve to provide current Postdocs or Fellows the opportunity to continue their research with a higher rank and salary. In some cases, the job descriptions are tailored to the work that is being performed by a single candidate. As an example, the Associate opening into which Manu Vanaerschot was hired was put to competitive process. While he formally applied, he expected to be the "main applicant" because the job description was tailored to his specific field of inquiry.

Director of the Office of Postdoctoral Affairs Peterson described the hiring process for Fellows as originating with the Fellow selecting the Employer. The only examples of Fellow appointments in the record, however, are those of Tulsi Patel, who was offered a position in a lab as a Postdoc before she obtained fellowships which funded the same work she and her PI had already agreed she would perform, as described above. Thus, in at least some instances,

postdoctoral researchers apply separately for fellowships only in the sense that they are seeking an alternate source of funding for the same work. In the case of both Postdoc and Fellow positions, the PI determines whether the applicant will work in their lab.

Salaries and Benefits

The Vice Provost for Academic Administration sets annual salary ranges for the various classifications. Within those ranges, the various Faculties set salary levels for Officers of Research which are, "appropriate to recruit and retain officers of research in their respective disciplines..." For specific researchers working in labs, PIs appear to have discretion to set salaries, with approval of the department chair.

For the 2018-2019 academic year, the minimum salary for an Associate is $56,300, for a Postdoc is $50,123, and for a Fellow is $48,432. Minimum salaries for all positions at issue are based on NIH standards. Salaries for Associates and Postdocs above $118,894 and $91,811, respectively, require special approval. There is no evidence regarding a point of special approval for salaries of Fellows.[5]

Associates and Postdocs, are paid bimonthly by Columbia from funds sourced from grants to the University; their salaries are specifically provided for in those grants. The Employer takes tax withholdings from their pay. Fellows are paid monthly, from an account at Columbia through which it acts as payroll agent to disburse the fellowship funding. Fellows are paid via 1099s, with no withholdings for tax purposes.

Associates and Postdocs receive the same benefits package from the University, including a choice of three health insurance plans. Fellows sometimes receive benefits through their fellowships. When they do not, the Employer provides them with benefits similar though somewhat less robust than those provided to Associates and Postdocs (Fellows are only eligible for one of three health insurance plans). Fellows receive Life Insurance and access to the University's Employee Assistance Program. They do not receive tax-related benefits such as the flexible spending account option or other fringe benefits. Thus, Researchers gain and loose benefits accordingly when they switch between Postdoc and Fellow appointments. As in the case of Fellow Patel, they may spend brief periods as a Postdoc, in which they have a retirement account and pre-tax transit benefits, followed by fellowship-funded work for which these benefits are not available.

According to the Faculty Handbook, all Officers of Research in their first 20 years of full-time service earn two days of vacation for each month of appointment, up to a maximum of 23 days. Fellows are entitled to the same vacation benefits as Associates and Postdocs unless the provisions of their granting agency specify otherwise. In all cases, requests for particular days off are authorized by the PI of the lab.

The NIH requires that postdocs have annual career development plans as a condition of granting financing for their research projects. Accordingly, Columbia offers various career

[5] Where fellowship funding does not provide for the minimum salary level, however, the Employer supplements the payments up to the minimum.

development programming and counseling services to postdocs through its Office of Postdoctoral Affairs. These services are not available to Associates.

ANALYSIS

Postdoctoral Research Fellows are Employees of Columbia under Section 2(3) of the Act

A threshold issue is the employee status of the Postdoctoral Research Fellows. The Employer contends, citing *Fordham University*, 193 NLRB 134 (1971), that the Fellows are not employees because they work on externally funded research grants. In *Fordham University*, the Board found that, "individuals hired by faculty members directing research grants" were not employees of Fordham. The Board there noted that the hiring of these individuals was by faculty members independent of University approval. Here, by contrast, the hiring of Fellows is subject to the approval of a Dean or Vice President. More notably, the Employer concedes that other classifications of officers at its institution, many of whom work on externally funded research grants, are employees.

Further, the Board found in *Columbia University,* 364 NLRB 90 (2016) that student research assistants (student employees who are not at issue here) funded by training grants are employees of Columbia. As discussed above, Fellow Patel works with exactly this type funding. In the absence of evidence distinguishing other types of fellowships from those funded by training grants, I find *Columbia University* controlling on this point, and therefore, Fellows are employees under the Act.

Alternatively, the Employer argues that Fellows are independent contractors because they control details of their own work and have the significant entrepreneurial opportunity for gain or loss, as required by Board law. The Employer's position is not supported by the underlying record evidence. The record generally indicates that Fellows may more easily obtain an appointment at Columbia because of their independent funding. Specific examples of significant independence, control and entrepreneurial opportunity, however, were not adduced in the record. Rather, the sole example of a Fellow working at Columbia is Patel. Her fellowships were obtained as a means of performing the same work she was expected to perform with her Postdoc appointment. Her grant application described the work she was performing in her PI's lab. Contrary to the Employer's contention, the evidence demonstrates that she is supervised by her PI in exactly the way a Postdoc is supervised. I thus find that the Employer has not satisfied its burden to show that Fellows should be statutorily excluded from the unit as independent contractors.

The Petitioned-for Unit is Appropriate

The Employer does not assert that the smallest appropriate unit must include employees excluded from the petitioned-for unit. Instead, the issue presented is whether the petitioned-for classifications share a community of interest.

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in an appropriate unit. *Overnite Transportation Co.*, 322

NLRB 723 (1996). In determining whether the employees have the requisite community of interest to be appropriately grouped in a unit for collective representation, the Board evaluates whether petitioned-for employees share a community of interest with each other. Among the factors the Board considers are:

> whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 6 (Dec. 15, 2017), citing *United Operations, Inc.*, 338 NLRB 123 (2002).

In the instant case, the petitioned-for classifications share a community of interest sufficient to find that it is an appropriate unit, as more fully discussed below.

Common Supervision

It is clear that Associates, Postdocs, and Fellows all are supervised by the PI of the labs in which they work. Indeed, there is no evidence that any of these employees report to any other personnel about their work. Despite vague testimony that the postdoctoral researchers are "mentored" by their PIs to a greater degree than the Associates, there is no evidence of additional meetings or other formal or informal evaluations by the PIs of the work of postdocs vis-à-vis Associates. This factor clearly weighs in favor of finding a community of interest.

Skills and Training

All of the employees in the proposed unit have Ph.Ds in their fields and are conducting independent research. While those in first-year postdoctoral appointments are generally less experienced than those in Associate appointments, even this distinction is not universal or clear-cut, as there is evidence that Postdocs are sometimes first appointed at Columbia after they have had postdoctoral experience in other institutions. While Associates, unlike postdoctoral researchers, must have some prior experience, there is no evidence of the average number of years of experience Associates have prior to their appointments.

Researchers in all the classifications at issue are performing research with an eye to publishing results. There is no evidence showing that any of the classifications have specialized lab skills or demonstrated proficiency in techniques that would not apply to those in other classifications. The example of Dr. Vanaerschot makes clear that publication may be a factor in promotion. Thus, Associates may be expected to have published more than postdoctoral researchers. But, as with lab skills, there is no evidence indicating that an Associate is distinguished from a postdoctoral researcher by a particular number or type of publications. This factor weighs in favor of finding a community of interest.

Departmental Organization and Functional Integration and Interchange

All of the researchers in the proposed unit work independently on their own projects, which all relate to the research outlined in grants obtained by their PI. This is in accord with the research goals of Columbia and pursuant to the terms of the grants under which they work. Given that the work they perform inherently involves a great deal of independence, it is significant that when there is collaboration, it is with each other as fellow members of the same labs and/or related labs at Columbia. They share research progress with each other at regular lab meetings.

The researchers in all of the classifications in the proposed unit work throughout various academic departments at Columbia. The classifications do not in any way correspond to particular fields of study.

Administratively, all are appointed as Research Officers. While it is true that an Associate position is a promotion for a Postdoc, the type of work performed by an Associate is virtually indistinguishable from that performed by a Postdoc or Fellow. Likewise, while there is no evidence that Fellows and Postdocs replace each other in the middle of research projects, the testimony of Dr. Patel demonstrates that a single individual can move between appointments as a Postdoc and Fellow in both directions without any impact on the work she is performing. Thus, the evidence shows that regardless of title, all those in the proposed unit perform the same type of work.[6]

Terms and Conditions of Employment

As reviewed above, benefits are similar if not identical between classifications in the petitioned-for unit. The differences in their minimum salaries and benefit packages are not, in my view, sufficient to require any of them to be excluded from the unit.

I likewise am not convinced that the longer anticipated tenure of a researcher with an Associate appointment distinguishes her sufficiently from her Postdoc and Fellow colleagues to prevent them from being together in an appropriate unit. The evidence shows that while Postdocs and Fellows will only remain in their particular classification for up to three years, absent special circumstances, a significant number will continue doing the same work for Columbia thereafter in the Associate classification. Further, while there is no evidence of the average time a researcher spends at Columbia in an Associate appointment, there is some testimony which indicates Associates may anticipate promotions at the five or ten year mark. Thus, I do not find that the evidence demonstrates that the tenure of Postdocs and Fellows distinguishes them from their Associate colleagues to such a degree that they would not, together, form an appropriate unit.

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[6] Compare *Yale University*, 184 NLRB 860 (1970), where the Board found that a unit limited to the non-faculty, clerical, and technical employees in the Department of Epidemiology and Public Health at the Yale School of Medicine was inappropriate because, while the research conducted in the department varied from that undertaken elsewhere, the skills and techniques employed by the department personnel did not vary substantially from those of other Yale employees holding parallel jobs.

The Employer stresses regulations applicable to hiring Associates as opposed to Postdocs or Fellows. However, while of course the Employer must be mindful of the distinctions between classifications with respect to regulations imposed by the EEOC or other agencies, for the purposes of community of interest between employees these differences are marginally relevant at best. There is no evidence in the record of applicants receiving a Postdoc appointment but being denied Associate appointments owing to these differences. To the employees, the distinctions would appear to be a matter of degrees of paperwork, since it is clear that in all cases it is the PI who makes the selection of the candidate for a particular lab position.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer, a New York corporation with a place of business located in New York, NY, operates a private university. Annually, in the course and conduct of its operations, the Employer derives gross revenues in excess of one million dollars, and purchases and receives at its New York, NY facility goods and materials valued in excess of $5,000 directly from suppliers located outside the State of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of Sections 2(6) and (7) the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Included: All postdoctoral researchers who have received a doctorate or its professional equivalent who provide services to Columbia University, including Postdoctoral Research Scientists, Postdoctoral Research Scholars, Postdoctoral Research Fellows, Associate Research Scientists, and Associate Research Scholars.
>
> Excluded: All other employees, including Postdoctoral Clinical Fellows and Postdoctoral Residency Fellows, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they want to be represented for purposes of collective bargaining by Columbia Postdoctoral Workers and United Automobile, Aerospace and Agricultural Implement Workers of America (CPW-UAW).

Election Details

Voters should present University identification or some other acceptable form of identification, such as a drivers license. Voters without identification may be subject to challenge, provided that the observer raises the challenge.

The election will be held on October 2 and 3, 2018, according to the following schedules at each of the following locations:[7]

Morningside Heights Campus – Earl Hall

10:00 a.m. – 2:00 p.m.
3:00 p.m. – 7:00 p.m.

Columbia University Medical Center – Hammer Building

10:00 a.m. – 2:00 p.m.
3:00 p.m. – 7:00 p.m.

The election will be held on October 2, 2018, according to the following schedules at each of the following locations:

Lamont-Doherty – Sutton House

11:00 a.m. – 1:00 p.m.

Nevis Laboratory, Irvington, NY – the Library at 136 Broadway

10:00 a.m. – 11:00 a.m.

Manhattanville – Jerome L. Greene Science Center

1:00 p.m. – 3:00 p.m.

[7] The parties were invited to present arguments as to the need for a mixed manual-mail ballot election in their briefs. The Employer argued there is no need for mail ballots and the Petition did not submit any comments on this issue.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **September 15, 2018**, and those paid by stipends on **September 1, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. The Employer must also include in a separate section of that list the same information for those individuals who, according to this direction of election, will be permitted to vote subject to challenge.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **September 25, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the

list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review. Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: September 18, 2018

John J. Walsh, Jr.
Regional Director
National Labor Relations Board
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New York, NY 10278-3699