

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

UNIVERSITY OF CHICAGO

Employer

and

Case 13-RC-198365

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 743¹**

Petitioner

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of all hourly paid student employees of the Employer's libraries. The Employer contends that *Trustees of Columbia University in the City of New York*, 364 NLRB No. 90 (2016) (*Columbia University*) was wrongly decided and the Board should return to the standard in *Brown University*, 342 NLRB 483 (2004). However, prior to taking evidence regarding the Employer's contention, the hearing officer required the Employer to submit an offer or proof regarding the evidence it intended to present in support of its contention. Pursuant to my instructions following the Employer's offer of proof, the hearing officer did not allow the Employer to present its evidence. I hereby affirm the refusal to allow evidence.

Because I conclude that the unit sought by Petitioner is appropriate for collective bargaining and that a question of representation exists under Section 9(c) of the Act, I am directing an election in this matter in the unit sought by Petitioner.

The Employer also contends that certain individuals in the petitioned-for unit may be covered by the petition in Case 13-RC-198325.² Because the Employer's contention concerns whether certain individuals should be included in the unit in the instant matter and, therefore, concerns their eligibility to vote, I further conclude that the Employer's contention need not be litigated or resolved before the election is conducted because the resolution of the issue would not significantly change the size or character of the unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The Graduate Students United was served with the Notice of Hearing, but declined to intervene. It was not present at the hearing and has not asserted any position with regard to the unit appropriate herein, the statements of unit contentions are limited to those made by the Petitioner and the Employer.

² I take administrative notice of the petition and first amended petition in Case 13-RC-198325 and the Employer's statement of position in that matter.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization involved claims to represent certain employees of the Employer.

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.

At the start of the hearing in this matter, the hearing officer reviewed with the parties their positions regarding both the appropriateness of the unit and any eligibility issues with regard to individual voters. At that time the Employer contended that: 1) the petitioned-for employees are not "employees" under Section 2(3) of the Act; 2) a certified collective-bargaining representative would interfere with the predominantly educational nature of the relationship between the petitioned-for employees and the Employer; and, 3) the petitioned-for unit consists of temporary and/or casual employees. Thereafter, pursuant to Section 102.66(c) of the Board's Rules and Regulations, the hearing officer required the Employer to present an offer of proof identifying its witnesses who would testify and setting forth both a summary of their testimony and any documentary evidence the Employer would offer. Following receipt of the offer of proof, I reviewed it to determine if it was sufficient to sustain the Employer's position.

After reviewing the Employer's offer of proof, I concluded that the evidence described in it is insufficient to sustain the Employer's contention that: 1) the petitioned-for employees are not "employees" under Section 2(3) of the Act; 2) a certified collective-bargaining representative would interfere with the predominantly educational nature of the relationship between the petitioned-for employees and the Employer; and, 3) the petitioned-for unit consists of temporary and/or casual employees. Therefore, consistent with Section 102.66(c), I instructed the hearing officer to decline to accept evidence from the Employer related to its contention. I hereby affirm that the Employer's offer of proof is insufficient, and in doing so conclude that the facts the Employer included in its offer would not sustain its position.

The only remaining issue is the inclusion of certain individuals in the unit and, therefore, the eligibility of certain individuals to vote. Pursuant to instructions from me, the hearing officer provided the parties with an opportunity to further explain their positions on the record. Of the 226 student employees in the petitioned-for unit, approximately 27 graduate students employed in the libraries, who are therefore covered by the instant position, also have separate employment with the Employer as teaching assistants, research assistants, course assistants, workshop coordinators, writing interns, preceptors, language assistants, instructors, lecturers, lectors, and teaching interns and are therefore potentially covered by the petition filed in Case 13-RC-198325. The Employer claimed the students holding dual employment must be included in one

³ The parties stipulate, and I find, The University of Chicago, an Illinois private non-profit corporation, is a teaching and research university located in the City of Chicago, Illinois. During the past calendar year, a representative period, the University derived gross revenues in excess of \$1,000,000 and received goods and materials valued in excess of \$50,000 from points located directly outside the State of Illinois.

or the other unit, citing *Nu-Life Spotless, Inc.*, 215 NLRB 357 (1974). The Union argued that the individuals at issue were dual-function employees and, therefore, eligible voters under both petitions, citing *Harold J. Becker Co., Inc.*, 343 NLRB 51 (2004); *Medlar Electric, Inc.*, 337 NLRB 796 (2002); *Columbia College*, 346 NLRB 726 (2006); *KCAL-TV*, 331 NLRB 323 (2000). Because Petitioner's statement at hearing and the Employer's statement of position raise eligibility issues affecting at most 12 percent of the unit, I conclude that the disputed employees would not significantly change the size or character of the unit and thus the contentions are not relevant to a question concerning representation. Therefore, I instructed the hearing officer to not allow the parties to present evidence, as I concluded that it was unnecessary to resolve the eligibility issues before the election is conducted.

Because the proposed unit is appropriate, consistent with Section 102.66(d) of the Board's Rules and Regulations, I direct an election in the following unit of employees and order that the individuals in those classifications may vote in the election but their ballots shall be challenged since their eligibility has not been resolved:

Included: All hourly paid student employees of the University of Chicago Libraries, including students employed at the Joseph Regenstein Library, the Joe and Rika Mansueto Library, Eckhart Library, John Crerar Library, D'Angelo Law Library, and the Social Services Administration Library.

Excluded: All employees represented by other labor organizations and covered by other collective-bargaining agreements, temporary employees, managerial employees, guards, and professional employees and supervisors as defined in the National Labor Relations Act.

OTHERS PERMITTED TO VOTE: At this time, no decision has been made regarding whether graduate students who are employed in the Employer's libraries and also hold positions as teaching assistants, research assistants, course assistants, workshop coordinators, writing interns, preceptors, language assistants, instructors, lecturers, lectors, and teaching interns are included in, or excluded from, the bargaining unit, and individuals in those classifications may vote in the election but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

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 wish to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local 743.

A. Election Details

The election will be held according to the following schedule:

Dates	Times	Locations
Friday, June 2, 2017	10:00a.m. - 1:00p.m. and 3:00p.m. - 5:30p.m.	Room 354 at the Joseph Regenstein Library 1100 East 57th Street, Chicago, Illinois
Friday, June 2, 2017	10:00a.m. - 1:00p.m. and 3:00p.m. - 5:30p.m.	Office at the Social Service Administration Library 969 E. 60th Street, Chicago, Illinois
Monday, June 5, 2017	10:00a.m. - 1:00p.m. and 3:00p.m. - 5:30p.m.	Room A-11 at the Joseph Regenstein Library 1100 East 57th Street, Chicago, Illinois
Monday, June 5, 2017	10:00a.m. - 1:00p.m. and 3:00p.m. - 5:30p.m.	2nd Floor Conference Room at the D'Angelo Law Library 1121 East 60th Street, Chicago, Illinois
Tuesday, June 6, 2017	10:00a.m. - 1:00p.m. and 3:00p.m. - 5:30p.m.	Room A-11 at The Joseph Regenstein Library 1100 East 57th Street, Chicago, Illinois
Tuesday, June 6, 2017	10:00a.m. - 1:00p.m. and 3:00p.m. - 5:30p.m.	2nd Floor Conference Room at the D'Angelo Law Library 1121 East 60th Street, Chicago, Illinois
Wednesday, June 7, 2017	10:00a.m. - 1:00p.m. and 3:00p.m. - 5:30p.m.	Room A-11 at the Joseph Regenstein Library 1100 East 57th Street, Chicago, Illinois
Thursday, June 8, 2017	10:00a.m. - 1:00p.m.	Room A-11 at the Joseph Regenstein Library 1100 East 57th Street, Chicago, Illinois

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **May 20, 2017**, 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.

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.

To be timely filed and served, the list must be *received* by the regional director and the parties by **May 25, 2017**. 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.nlr.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.nlr.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.

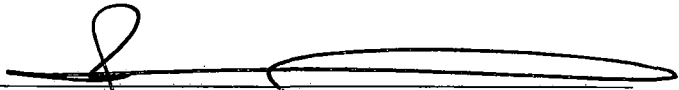
RIGHT TO REQUEST REVIEW

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.nlr.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 at Chicago, Illinois this 23rd day of May 2017.



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