

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

TRUSTEES OF COLUMBIA UNIVERSITY IN  
THE CITY OF NEW YORK

and

COLUMBIA POSTDOCTORAL WORKERS  
AND UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA

Case No. 02-RC-225405

COLUMBIA UNIVERSITY'S OFFER OF PROOF (NON-EMPLOYEE STATUS)

Pursuant to Section 102.66 of the National Labor Relations Board's ("NLRB" or "Board") Rules and Regulations, 29 C.F.R. § 102.66, Trustees of Columbia University in the City of New York (the "University"), by its attorneys Proskauer Rose LLP, submits the following Offer of Proof in support of its position that postdoctoral trainees (i.e., postdoctoral research scientists/scholars and postdoctoral research fellows) who are within the petitioned-for unit of the above-captioned representation petition filed by Columbia Postdoctoral Workers and United Automobile, Aerospace and Agricultural Implement Workers of America ("CPW-UAW" or "Union") are not employees within the meaning of Section 2(3) of the National Labor Relations Act (the "Act"). This is the case because postdoctoral trainees are distinguishable from the graduate student assistants found to be employees in *Columbia University*, 364 NLRB No. 90 (2016). Instead, the postdoctoral trainees are analogous to the non-employee "housestaff" in *Cedars-Sinai Medical Center*, 223 NLRB 251 (1976) and *St. Clare's Hospital and Health Center*,

229 NLRB 1000 (1977).<sup>1</sup> Therefore, as it relates to the postdoctoral trainees, the petition fails to raise a “question concerning representation.” The University requests a hearing on this issue because based on the University’s proof of the foregoing, the Union’s petition, as it relates to postdoctoral trainees, should be dismissed.

Guidance by the General Counsel requires a pre-election hearing to determine whether postdoctoral trainees are employees covered by the Act. In his April 6, 2015 *Guidance Memorandum on Representation Case Procedure Changes* (“GC Memo 15-06”), the General Counsel mandated that employee status issues must be resolved at a pre-election hearing:

Issues as to whether individuals are employees within the meaning of Section 2(3) of the Act must be litigated at the initial hearing if they involve the entire unit and should likely be litigated at the initial hearing if they concern classifications that constitute more than 20 percent of the unit.

GC Memo 15-06 at 16-17. Here, the University contests the employee status of postdoctoral trainees, which constitute greater than 20 percent of the petitioned-for unit. Therefore, the Regional Director should provide the University the opportunity to demonstrate that the petitioned-for postdoctoral trainees are not “employees” as defined by the Act.

In *Columbia University*, the Board set forth a two-pronged test for common law employee status; “the payment of compensation, in conjunction with the employer’s control, suffices to establish an employment relationship for the purposes of the Act.” Slip Op. at 6. The postdoctoral trainees at the University conduct research primarily as part of their continuing training to ultimately become professional researchers. As such, the “salient economic character” of the relationship that the NLRB found existed in *Columbia University* between the student

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<sup>1</sup> Although the Board overruled *Cedars-Sinai* and *St. Clare’s in Boston Medical Center*, 330 NLRB 152 (1999), the University contends that *Boston Medical* was also wrongly decided.

teaching and research assistants and the university, does not exist among the postdoctoral trainees at the University.<sup>2</sup>

If provided an opportunity to present evidence to show that postdoctoral trainees at Columbia are not employees under Section 2(3) of the Act, the University will present witnesses including, but not limited to Michael Purdy, Executive Vice President for Research. Dr. Purdy will testify to the following facts to show that postdoctoral trainees are not employees under *Columbia University*:

- (1) Postdoctoral trainees are merely “trainees” who, despite having a PhD degree, still require significant education, mentoring, and training in order to learn how to successfully conduct independent research.
- (2) Postdoctoral trainees seek positions at Columbia not as a job or as a career, but instead for educational and training purposes. The postdoctoral trainee position is not a permanent, career position; rather, it is a temporary position meant to help the trainees develop the skills for future permanent employment. Postdoctoral trainees receive appointments for 1-3 years, whereas true “employees” of the University may hold their job for decades or an entire career.
- (3) The Office of Postdoctoral Affairs provides career and professional development counseling, resume reviews, mock interviews, career workshops, and many other programs to help postdoctoral trainees prepare for future employment.

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<sup>2</sup> The University submits that *Columbia* was wrongly decided and that the Board majority erred in its analysis of the common law of employment when it determined that the graduate students in question in that case were employees, and specifically reserves the right to argue that point in any subsequent stages of this case. Nonetheless, the University recognizes that *Columbia* represents current Board law, and this Offer of Proof is based upon the *Columbia* ruling.

- (4) Postdoctoral trainees conduct research under the tutelage and guidance of principal investigators who mentor the trainees. Principal investigators teach postdoctoral trainees how to become independent researchers. For example, principal investigators will educate postdoctoral trainees about how to successfully secure grant funds or collaborate with other researchers, both increasingly important aspects of conducting independent research.
- (5) Unlike other employees of the University, postdoctoral trainees are not “hired” based on their skills and ability to perform specific job tasks. Instead, the University appoints postdoctoral trainees to research positions based on their fit within a particular lab or with a particular principal investigator and their prior experience conducting mentored research.
- (6) The tasks performed by postdoctoral trainees are fundamentally educational and are part of their training.
- (7) Postdoctoral research fellows (a subset of postdoctoral trainees who are part of the petitioned-for unit) are funded by external funding sources (*e.g.*, government agencies) and do not receive any compensation from the University, and thus cannot be found to be “employees” even under the Board’s *Columbia University* test.

For many of the same reasons identified above postdoctoral trainees are more akin to the “housestaff” positions described in *Cedars-Sinai* (*i.e.*, interns, residents, and clinical fellows). In *Cedars-Sinai*, the Board held that the “housestaff” were “primarily engaged in graduate educational training and were therefore students rather than employees.” *Cedars-Sinai*, 223 NLRB at 253. There, the “housestaff” participated in their programs “not for the purpose of earning a living; instead they are there to pursue the graduate medical education that is a requirement for the practice of medicine.” *Id.* Although they cared for patients, it was “simply the means by which

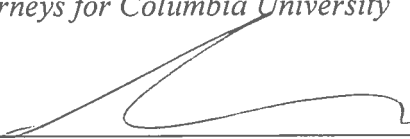
the learning process is carried out.” *Id.* Their compensation (*i.e.*, stipend) was fixed and “more in the nature of a living allowance than compensation for services rendered.” *Id.*

Similarly, here, postdoctoral trainees seek such positions not to earn a living but to learn—for a temporary period of time—how to conduct independent research under the educational instruction and mentorship of a principal investigator. The trainees conduct research and perform tasks as part of the learning process. Their compensation is also generally fixed and does not vary based on the extent of services rendered. The University submits that *Boston Medical Center* was incorrect in overruling *Cedars-Sinai* and *St. Clare’s*. Therefore, consistent with those cases, the University’s postdoctoral trainees are not employees under Section 2(3) of the Act.

Respectfully submitted,

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By: 

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