

**ASSOCIATION FOR THE STUDY OF HIGHER EDUCATION**  
**public comment on**  
**the National Labor Relations Board's proposed rule change**  
**regarding graduate assistants' statutory rights to collective bargaining**  
**under the National Labor Relations Act**

NLRB Docket No. 2019-0002

Proposed Rule FR 2019-20510

Jurisdiction—Nonemployee status of university and college students working in connection with their student studies, 28 CFR Part 103

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Public comments submitted by:

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## **I. Background**

The ensuing comments on the National Labor Right Board's (NLRB, hereafter) proposed rule change regarding graduate student assistants is provided by the Association for the Study of Higher Education (ASHE), a professional association that followed a formal "position taking" process (in which the association's Position Taking Committee reviewed a draft comment solicited by its President from a subcommittee of ASHE members) to adopt this document for submission to the NLRB in the comments period.

ASHE is a scholarly, professional association (incorporated as a 501(c)3 in 1976) whose membership of 2,183 includes: faculty who study and teach about higher education settings and policy; graduate students who study in Higher Education and Student Affairs masters and doctoral programs; and professionals and administrators working on college/university campuses, in state level systems and agencies, and in national agencies, associations, foundations, and policy groups in the higher education arena. The association includes members from not-for-profit (independent) private and public colleges and universities, as well as from proprietary (for-profit) institutions. A significant proportion (over one-third) of ASHE's members are graduate students, most of whom hold graduate research, teaching, and/or administrative assistantships. Thus, our membership has experience and expertise in regard to the proposed rule change and is directly and materially affected and implicated by the actions of the NLRB.

The annual conference of ASHE (which in 2020 will be the association's 45<sup>th</sup> conference) regularly includes sessions focused on issues surrounding graduate students and education, faculty/student relations, organizational and workforce restructuring, and higher education

policy. It also regularly features sessions for graduate students on future careers. Moreover, the journal of ASHE, *The Review of Higher Education* (now in its 43<sup>rd</sup> volume), as well as the scholarship of its members, has included scholarship on the above subjects, including on graduate assistant unionization. As an applied field, a major aim of the association is to inform policy and practice in higher education with independent, high quality, policy relevant research.

The association has adopted the position set forth in the comment below in large part by virtue of our work as researchers who study graduate education, professorial-student interactions, higher education policy, and unionization. It also, however, provides the comment by virtue of the experiences of our members as professors, graduate assistants, and professionals/administrators working in relation to the matters at hand.

## **II. The NLRB's proposed rule change: The questions at hand**

Published first on September 23, 2019, the National Labor Relations Board (NLRB, hereafter) proposed a rule change concerning the standing of graduate student assistants as employees with the statutory right to collectively bargain under the National Relations Labor Act (NRLA, hereafter). Entitled in the Federal Register, "Jurisdiction-Nonemployee status of university and college students working in connection with their studies," the proposed rule change would reverse a 2016 ruling of the NLRB in *Columbia University*, 364, NLRB No. 90 (2016). The Association for the Study of Higher Education's comment is intended to inform the proposed rule change, on the principle that public policy should, as much as possible, be guided by existing research, evidence, and facts on the matters at hand.

The proposed change is one of several shifts in the past 20 years since the NLRB first recognized graduate students as employees in 2000. In closing its opening summary of the change, the current NLRB indicates that, "This rulemaking is intended to bring stability to an area of federal labor law in which the Board, through adjudication, has reversed its approach three times since 2000." <https://www.federalregister.gov/documents/2019/09/23/2019-20510/jurisdiction-nonemployee-status-of-university-and-college-students-working-in-connection-with-their>

From the perspective of ASHE, a scholarly association focused on bringing data and research findings to bear on higher education policy issues, including on very contentious ones, the path to building more stability and consensus into labor law regarding in this case graduate assistants' statutory status and collective bargaining rights under the NLRA, lies in constructing policy on the basis of available evidence. Such evidence exists, and it is the aim of this comment to organize that evidence in ways that will benefit the Board in considering the following questions about graduate assistants and unionization.

ASHE's comment addresses three questions surrounding positions articulated in the "Supplementary Information" section of the NLRB's proposed rule change as well in previous NLRB rulings—*New York University*, 332 NLRB 1205 (2000), *Brown University*, 342 NLRB 483 (2004), and *Columbia University*, 364, NLRB No. 90 (2016):

- (1) Are graduate student assistants in private universities only or primarily students, or are they employees providing substantial economic services to universities as well as being students?

- (2) If graduate assistants in private universities are accorded statutory rights under the NLRA to collectively bargain, will this adversely impact the academic/educational relationship between these graduate assistants and their professors?
- (3) If graduate assistants in private universities are accorded statutory rights under the NLRA to collectively bargain will this adversely affect the educational relationship between these assistants and the university, undermining the apprenticeship model of graduate education and the collegial nature of academic decision making as well as academic freedoms of and in universities and colleges, introducing industrial and corporate-style private sector models of relations?

Underlying these three questions is an unexamined assumption underlying the proposed rule change by NLRB. That assumption is that the work and roles of graduate assistants in private universities is so substantively different from the work and role of graduate assistants in public universities, where in many of the nation's leading institutions of higher education, including so-called "public ivies" such as the University of California, and the University of Michigan, graduate assistants have been unionized for decades, that the experience of graduate assistant unionization in these institutions does not bear on the questions at hand for private, not-for-profit universities. Indeed, as in its 2004 ruling (*Brown University*, 342 NLRB 483 2004), the NLRB is suggesting that graduate student assistants in private institutions should not be recognized employees because their relationship to the university is primarily educational and that designating them as employees would undermine their educational relationship with faculty and the academic integrity of the universities in which they work. The NLRB's rationale in 2004 as well as in the proposed rule change ignores the fact and experience that graduate students in some of the country's most esteemed public institutions and systems of higher education have been unionized for 50 years, ever since students organized the first graduate assistant union at the University of Wisconsin at Madison in 1969 (Cain, 2017a, 2017b). Thus, ASHE's comment also directly addresses this assumption.

The above are questions and assumptions about which research, empirical evidence, and facts can be drawn on to address. Below, ASHE's comment draws on peer-reviewed and journalistic research and draw on our members' years of experience as higher education professionals to address each of these questions and the overriding, embedded assumption.

### **III. Question #1: Are graduate assistants in private universities only or primarily students, or are they employees providing significant and substantial economic services to universities as well as being students?**

The NLRB's proposed rule change rests on the rationale and claim that professors and graduate students are primarily hold an educational relationship with universities. No data or evidence have been provided by the NLRB to substantiate this view in support of the proposed rule change. Thus, in this section, ASHE's comment examines the question of whether graduate assistants are employees as well as students, and whether that employment is substantial in providing significant service to the university.

Several federal governmental entities as well as federal statutes treat graduate assistants as employees. Among these are the Department of Labor's Bureau of Labor Statistics, the

Department of Education’s National Center for Education Statistics, the Department of Treasury’s Internal Revenue Service, and the Title IX statute of the Department of Education.

Moreover, in addressing the third question, in Section V.a. below, ASHE’s comment reviews data and research on how the restructuring of academic employment and of academic institutions has fundamentally shifted universities towards more and more emphasizing the economic role of graduate assistants in generating revenue and prestige for the institution through their work, in ways that run counter to prioritizing the value of their educational experience. In short, universities are increasingly utilizing graduate assistants as relatively low-wage labor, employing them to benefit the institution as much or more than the graduate assistant’s education. For now, though, ASHE’s comment turns to the ways that several branches of government and law regard graduate assistants.

**a. U.S. Department of Labor.** The Department of Labor’s Bureau of Labor Statistics (BLS) has a Standard Occupational Classification System (SOCS). In this classification scheme, three types of graduate assistants are identified as “occupations”—graduate assistant-teaching, graduate assistant-research, graduate assistant-other. Such a designation is distinct from the designation accorded graduate students, who are defined only in terms of their student status. Thus, the BLS’ official categorization system recognizes graduate assistants as occupations of employment.

The BLS also recognizes the monies paid to graduate assistants, whether in private or public universities, as “wages.” Moreover, the U.S. Department of Labor’s Bureau of Labor Statistics provides summary data in tables on “Employment” and “Annual Mean Wages” of Graduate Teaching Assistants” by state and by metropolitan area.

<https://www.bls.gov/oes/current/oes251191.htm>

In this largest category of graduate assistant employment, that of teaching assistants, the BLS indicates that in 2018 there were over 126,000 employees, paid an annual wage of slightly over \$36,000. <https://www.bls.gov/oes/current/oes251191.htm>

As a point of reference, that wage is not just comparable to but higher than wages paid to part-time faculty employees of colleges and universities, which as of 2017 were a little less than \$4,000 per course. <https://www.chronicle.com/article/3-Things-a-Faculty-Pay-Survey/246092>

**b. U.S. Department of Education.** The Department of Education’s National Center for Education Statistics (NCES) utilizes BLS categories of employment in collecting and reporting data on employment in college and universities. One mechanism for collecting and reporting out such data is the Integrated Postsecondary Data Analysis System, which has in its glossary for the institutional survey the BLS definitions of Graduate Assistant (Teaching, Research, and Other).

<https://surveys.nces.ed.gov/ipeds/Downloads/Forms/IPEDSGlossary.pdf>

In reporting that data, for instance in its Digest of Education Statistics, NCES provides tables regarding the “Employees” of colleges and universities, including graduate assistants in that category—e.g., the 2018 publication reports that in the Fall of 2016 there were .4 million graduate assistants included, along with faculty and other “staff.” As with the other employees in the table, they are listed as having this category of employment (graduate assistant) as their “primary occupation.” <https://nces.ed.gov/pubs2018/2018138.pdf> (see Table 19)

The instructions for colleges and universities filling out the survey further specifies the category of graduate assistants for Human Resources reporting purposes regarding the staffing of colleges and universities.

16) How should graduate assistants be reported in the IPEDS HR survey?

Graduate Assistants (Gas) should only be reported in the 2012-2013 IPEDS HR survey for the following categories: 1) GA-Teaching; 2) GA-Research; 3) GA-Management; 4) GA-Business and Financial Operations; 5) GA-Computer, Engineering, and Science; 6) GA-Community Service, Legal, Arts, and Media; 7) GA-Library and Instructional Support; and 8) GA-Healthcare Practitioners and Technical.

<https://surveys.nces.ed.gov/IPEDS/VisFAQHRSOC.aspx> - 13

c. **U.S Department of Treasury’s Internal Revenue Service.** For tax purposes, the monies paid to graduate assistants for their services and work, whether these monies are defined as stipends, salaries, fellowships, or otherwise are treated as taxable income, as with any employee. The websites of private universities make this clear to students. One example is Harvard University’s Graduate School of Arts and Sciences site, and its “Special Note Concerning US Income Taxes,” which reads as follows:

“Any grant or stipend amount awarded in excess of tuition, required fees, books, and supplies is subject to federal income tax, as is any funding contingent upon providing service to the University (for example, teaching fellowships or research assistantships).”

<https://gsas.harvard.edu/financial-support/funding-and-aid/special-note-concerning-us-income-taxes>

It is notable and important that, as the university’s web site states, the taxation of these monies is in recognition of the graduate assistants “providing service to the University.” In other words, tax law recognizes and is grounded in the substantial and significant economic relationship between the university and graduate assistants.

Private universities’ approach the handling of withholding of taxes throughout the year in disbursing those monies can vary from one university to another. For example, Cornell University does withhold income taxes from graduate student assistant stipends:

At the graduate level, all fellowship and assistantship stipends are considered taxable income by the Internal Revenue Service (IRS) and by New York State. For U.S. citizens, fellowship stipends do not generally have tax taken out at the time of payment. However, the IRS requires Cornell to withhold 14% in taxes from stipends paid to “non-resident aliens” (international students), unless the student is eligible for exemption under a tax treaty. All students are expected to report the stipend and taxable income on their tax return forms.

For graduate student assistantship stipends, taxes are withheld at the time of disbursement and the stipend amount is reported to the IRS by Cornell.

<https://gradschool.cornell.edu/financial-support/tax-information/>

By contrast, Brown, Columbia, Harvard, and Yale do not withhold taxes in the disbursement of stipends for graduate assistants who are U.S. residents. For example, Columbia’s site indicates:

Stipends are considered taxable income to students. However, based on IRS rules, the University does not withhold tax on stipends for domestic students or provide students with tax Form 1099. <https://sfs.columbia.edu/tax-info>

Due to IRS law, however, these universities do withhold taxes (at a rate of 14%) from the stipends of international graduate assistants, as indicated above on Cornell's site. And all of the universities make clear to graduate assistants that their stipends are taxable income in the eyes of the IRS.

Yale's relevant website provides a clear overview of and table regarding what is taxable as income.

“Overview of Tax Withholding and Documents

Taxes are generally not withheld from stipend payments, but are subject to taxation as income! You may need to set aside funds to pay for this...

Funding Source	Is Tax Withheld?	Does the IRS Consider this Taxable?	What Tax Document Will I Receive?
University Fellowship	No*	Taxable	None. Use the year-to-date amount on your final pay slip of the year.
Teaching Fellowship	Yes	Taxable	W-2
Research Assistant	Yes	Taxable	W-2
Project Assistant	Yes	Taxable	W-2

\*International students may be subject to tax withholdings on University fellowship payments.”

<https://gsas.yale.edu/resources-students/finances-fellowships/tax-information>

**d. U.S. Department of Education, Office for Civil Rights, Title IX statute of the Education Amendments of 1972, and mandatory reporters.** Although the interpretation of Title IX as a statute is in flux, at the university level, there is an important pattern that bears on the question of graduate assistants' role as employee and student, their role as mandatory reporter. Private universities make it clear that graduate assistants are mandatory reporters. That is to say, they are “responsible employees” who would be seen as such and as being in positions of authority by a reasonable person, and they are therefore responsible for reporting sexual misconduct that is disclosed to them, for example by students. Harvard University's FAQs on the matter make this particularly clear. In response to the following question, “9. I am a graduate student teaching fellow. An undergraduate in my section confided in me about having been sexually harassed by a faculty member, but that faculty member isn't the one teaching our course. Do I have to tell a Title IX Coordinator?,” the dropdown answer is:

“Yes, As a graduate student teaching fellow, you are an officer of the University and a person that undergraduates will recognize has institutional authority. You are expected to

share information that undergraduates give you about allegations of sexual harassment with a Title IX Coordinator.”

<https://titleix.college.harvard.edu/faqs>

The wording is telling. The university indicates that a graduate student teaching fellow is “an officer of the University.” By virtue of their employment status as a graduate teaching assistant, they carry significant legal responsibilities separate from those of other graduate students.

So, too, at Yale University, teaching assistants are identified as mandatory reporters.

<https://ylw.yale.edu/resources/title-ix-information/>

Duke University as well clarifies this on a website providing guidelines for graduate teaching assistants.

“The appropriate program or department Director of Graduate Studies must inform all graduate TAs and graduate IORs that they are mandatory reporters for any disclosures of sexual misconduct they receive in their capacity as a TA/IOR. As such, they are required to report such disclosures to the Office of Student Conduct...”

<https://gradschool.duke.edu/sites/default/files/documents/Duke-Graduate-TA-and-IOR-guidelines.pdf>

Columbia University’s site is even more explicit, in its FAQ’s page entitled, “Gender based misconduct reporting responsibilities for Columbia University faculty and staff.” The opening statement on the site is that, “University employees (faculty and staff) have a responsibility under federal law and university policy to immediately report gender-based misconduct involving undergraduate and graduate students.” A footnote after “faculty and staff” clarifies what is meant.

“Included are University officers, residential program staff, and adjunct faculty. Teaching assistants and other students with supervisory responsibilities also have the reporting responsibilities described here.”

[https://sexualrespect.columbia.edu/files/sri/content/gender-based-misconduct-reporting-responsibilities-for-columbia-university-faculty-and-staff\\_1201.pdf](https://sexualrespect.columbia.edu/files/sri/content/gender-based-misconduct-reporting-responsibilities-for-columbia-university-faculty-and-staff_1201.pdf)

Again, graduate teaching assistants are included in a footnote on university employees.

And the website and policy of the University of Southern California take the clarity a step further, indicating that failure to fulfill the mandatory reporting duties of a “responsible employee” may lead to discipline and removal from their position.

“Faculty, teaching assistants, academic advisors, residential assistants, and staff employees, including student employees who hold supervisory positions, are considered Responsible Employees.

Responsible Employees *must immediately report* all known information about suspected prohibited conduct to the *Title IX Office*. This includes the name of the parties and known details of the conduct. This duty applies no matter how the information is learned; whether from direct report from an affected party, from social media, or from a concerned third party. Failure by a Responsible Employee to make a timely report of prohibited conduct may be subject to discipline, up to and including removal from their position.” <https://policy.usc.edu/reporting-to-university-staff-and-faculty-student-misconduct/>

The above policies are reflective of a larger pattern among universities in regard to graduate teaching assistants. As indicated in a recent article (Brown, 2018), “At many—and possibly most—colleges and universities the vast majority of faculty members and graduate student instructors are considered mandatory reporters.”

In short, then, various branches of the U.S. Government recognize and treat graduate student assistants as employees, distinct from graduate students more generally. These branches of government regard as substantial the economic relationship of graduate assistants to the universities that employ them and at which they study. Indeed, under Title IX policy, these graduate assistants are identified as “responsible employees” by the universities themselves.

Further, as will be addressed in Section V.a. below, the restructuring of academic employment has foregrounded the economic role of graduate assistants in relation to the university, and the restructuring of academic institutions has foregrounded the business and corporate-like practices of universities in relation to various categories of academic staff, including graduate assistants.

In answer to Question #1, then, the above evidence makes it clear that graduate assistants are employees as well as being students, that their occupational status in providing work for income in return for providing service to the university, that the taxes they pay to the IRS on that income, and that their supervisory role of authority with Title IX mandatory reporting duties as a responsible employee and officer of the university individually and together represent substantial and significant service and benefit to the university by virtue of being employees, beyond their status as graduate students.

**IV. Question #2: If graduate assistants in private universities are accorded statutory rights under the NLRA to collectively bargain, will this adversely impact the academic/educational relationship between these graduate assistants and their professors?**

The NLRB’s proposed rule change also rests on the rationale and claim that professors and graduate students hold an educational relationship that would be disrupted by collective bargaining. Thus, in this section the ASHE comment addresses data and research that bear on the rationale and claim of adverse impact of collective bargaining on faculty and students’ educational relationship.

Three types of data and research undermine the claim that collective bargaining would undermine the academic/educational relationship between graduate assistants and their professors. First, empirical research on the views and aims of graduate assistants in relation to unionization demonstrates no pattern of their relationships with professors being compromised by collective bargaining. Second, empirical research on faculty in universities with unionized graduate assistants finds no pattern of adverse impact on graduate assistants’ relations with their professors. And third, the consistent foregrounding by graduate assistants in their union campaigns of issues surrounding sexual harassment, discrimination, and demands for working more hours than they are paid, all corroborated in surveys and studies of the graduate student experience, undermine the NLRB’s presumption that faculty and students’ relationships are

largely positive and unproblematic, and thus should not be disrupted and harmed by collective bargaining.

**a. Views and aims of graduate assistants about faculty/student relations and unionization.**

Consistently, empirical studies of the impact of unionization on the relationship between graduate assistants and their professors have found in surveys and interviews of graduate assistants no pattern of adverse impact. Indeed, to the contrary, results have yielded evidence of positive impact. A 2003 study focused precisely on the question of, “to what extent, if any, has graduate student unionization affected the student-mentor relationship” (Julius & Gumport, p.188), concluded, “[F]ears that [collective bargaining] will undermine mentoring relationships ... appear to be foundationless.” (p.209) The authors’ conclusions are perhaps all the more compelling given that they went in to the research anticipating that there might be some adverse effect: “Although we are concerned that collective bargaining among graduate students may change the nuances of pedagogical relationships between faculty and students, our data provided no such evidence.” (p.209) Indeed, the lead author at the time was Associate Vice-President for Academic Affairs at the University of San Francisco, overseeing labor relations.

Julius and Gumport’s research included interviews with institutional representatives, graduate union representatives, and faculty at 20 institutions, private as well as public, in which “graduate students were formally organized for the purpose of collective bargaining, or having been certified by a labor board, were seeking formal recognition from the employer.” (p.189)

Remarkably and ironically, despite consistent arguments from universities opposing graduate student unionization that collective bargaining would damage faculty/student relations, without any empirical evidence to that effect (p.191), the authors find on this matter that,

“Our analysis of interview data and contracts shows no conclusive evidence that collective bargaining in and of itself has compromised the student-faculty relationship in general or resulted in faculty unwillingness to serve as mentors. In fact, our data (as well as one other study) suggest that the clarification of roles and employment policies can enhance mentoring relationships (Rikard & Nye, 1997). Graduate student organizers themselves claim that such relationships will be strengthened, not negatively affected (Palmaffy, 1999). Many administrative spokespersons whom we interviewed (where labor agreements were in place) stated that graduate students unionization has not damaged the overall student-mentor relationship nor the communication in that relationship—in fact, they may be improved, because of more clearly delineated expectations and enumeration of responsibilities between faculty and graduate students set forth in labor agreements.” (p.201)

In other words, institutional management representatives in institutions where graduate assistants are unionized suggest that collective bargaining has actually enhanced faculty/student relationships, by virtue of the greater clarification and structure that collective bargaining agreements provide in regard to these relationships.

Another indicator bearing on whether graduate assistant unionization threatens the educational relationship of faculty and graduate student assistants is that these graduate student assistants do not see faculty as “the employer.” That is not who graduate assistants see themselves as organizing to negotiate with. Indeed, as Julius and Gumport (2003, p.206) state, “Graduate students also do not appear to consider ‘their’ professors as ‘the employer’ or believe they are

negotiating in opposition to the faculty but rather against an amorphous entity called ‘the university.’” Similarly, as Rhoades and Rhoads (2003) found in their study of unionizing graduate assistants, there is no evidence of efforts to challenge or criticize current faculty/student relations. In their study of ten graduate assistant organizations, two of which were at private universities, they found evidence of a strong professional and quality orientation in the public discourse of the graduate assistant union leaders, an orientation to supporting quality mentoring relationships between graduate students and faculty, as well as in the provision of undergraduate education. For in the eyes of graduate assistants, unionizing is about restructuring their relationship to the organization in which they work for, not of their relationship with faculty.

Additional evidence contravening the claim that graduate assistant unionization will harm the educational relationship between faculty and student comes from a 2004 study of graduate assistants at seven universities, five of which were in private universities (Falasco & Jackson, 2004). In regard to the question of whether unionization would disrupt student-faculty relationships, a slight majority (51 percent) of the 174 respondents responded “little to no impact,” and of those who reported some little impact, most indicated that it was positive. Another 31.4 percent reported “slight impact,” with slightly more characterizing that impact as negative. (p.797)

Moreover, a survey of over 500 graduate assistants at eight universities (four with unionized graduate assistants and four with no graduate assistant union) provides further direct evidence on whether graduate assistant unionization harms faculty student relations (Rogers, Eaton, & Voos, 2013). One of their key findings was that, “unionization [was] a significant positive predictor of both the personal support and professional support dimensions of student–teacher relationships” (Rogers, Eaton, & Voos, 2013, p.500). In other words, students in universities with union representation of graduate assistants reported higher levels of professional and personal support than did graduate assistants in universities where there was no such union representation. Thus, the findings are contrary to the premise and claim of both the proposed rule change and one key rationale offered to justify denying statutory rights to graduate assistants. It is worth emphasizing that in terms of prestige and Carnegie Classification, the public universities studied mirror private universities implicated in NLRB decisions (e.g., Brown, NYU) and other universities in which organizing has been taking place. In short, on the matters at hand, there is no reason to believe there is a substantial difference between the experience of graduate assistants in elite public universities versus in comparable private universities.

Thus, not only does the empirical evidence consistently fail to support the claim that graduate assistant unionization harms faculty-graduate student assistant relations, studies provide some indication that graduate assistant unionization is associated with more positive faculty/graduate assistant relations, in the eyes of the graduate assistants themselves.

#### **b. Views of professors about faculty/graduate assistant relations and unionization.**

Studies of professors’ views about graduate assistant unionization have not found a pattern of adverse impact on faculty’s mentoring and educational relations with graduate assistants. Thus, Julius and Gumport (2003, p.203) concluded in their study (reviewed above), “Faculty

spokespersons whom we interviewed did not perceive that their professional relationships with graduate students would be affected...”

Similarly, a 1999 study at one leading research university with unionized graduate teaching assistants surveyed 300 professors on their views regarding collective bargaining for these graduate students. At the core of the survey were questions about the impact of unionization on three aspects of the educational relationship between faculty and graduate assistants—mentoring, advising, and instructional activities. Hewitt’s (1999) study found that, “[O]ver ninety percent of the professors reported no negative educational impact on those three components of the relationship.” (interview, quoted in Fellman, 2001)

A subsequent, expanded study by Hewitt (2000) of liberal arts and sciences faculty at five public universities yielded similar results. In reviewing this research, it is notable that at the time of doing the research, the author held an administrative position in a private university (Tufts). The focus of Hewitt’s study was the administrative claim that according collective bargaining rights to graduate assistants would disrupt and compromise faculty’s educational relationship with these students. The findings of the study were overwhelmingly to the contrary. On an educational level, “it is clear the collective bargaining agreement does not play a role in defining faculty’s educational relationships with graduate students, as theorized by university administrators” (Hewitt, 2000, p.164). More broadly,

“It is clear, through the results obtained from the attitude scale and experience section, that faculty do not have a negative attitude toward graduate student collective bargaining. It is important to reiterate that the results show faculty feel graduate assistants are employees of the university, support the right of graduate students to bargain collectively, and believe collective bargaining is appropriate for graduate students. It is even more important to restate that, based on their experiences, collective bargaining does not inhibit their ability to advise, instruct, or mentor their graduate students.” (p.164)

The percentages were quite overwhelming—90 percent and 88 percent respectively of faculty believed that collective bargaining did not inhibit their ability to advise and/or instruct, and that it did not inhibit their mentoring relationships with graduate assistants.

Moreover, there is some indication that in the eyes of some faculty at universities with unionized graduate assistants, that there can be benefits of collective bargaining in contributing to clearer identification of duties, expectations, relationships, and workload.

“Another faculty member addressed the effectiveness of the graduate student union: ‘The graduate student union at our campus has had a positive impact on the working and, in turn, studying/research lives of our grad students through the agreements they’ve been able to negotiate. For our department, the contracts negotiated to date have helped regularize hiring, working in disciplinary procedures in positive ways.’” (Hewitt, 2000, p.162)

That sentiment is very much consistent with the experience of the ASHE drafting subcommittee members who have had direct experience of working in universities with unionized graduate assistants. As one indicated, unionization of graduate assistants in her university has afforded departments the opportunity to define policies and practices relevant to their particular contexts in ways that have enhanced working relationships between faculty and graduate assistants by clarifying and codifying expectations that involve not standardizing one size fits all but rather

that are attuned to the distinctive work demands of different departments in a large university. Similarly, another scholar pointed to the value of established contracts with guidelines of workload expectations to clarify and strengthen positive relations between faculty and graduate assistants.

**c. The aims of unionizing graduate assistants and corroborating empirical evidence as to tensions in the relationships between graduate assistants and faculty.** In their organizing and contract campaigns, graduate assistants consistently articulate and prioritize the need for contract language to address sexual misconduct, discrimination against various marginalized populations (such as LGBTQ students), the rights of non-resident graduate assistants of varying immigration statuses, and limitations on excessive work beyond the hours of their assistantships. Those aims characterize graduate assistants in private as well as public universities.

In many private universities, unionizing graduate assistants have foregrounded the above issues. For instance, at Brown university, a September 3, 2019 posting by the graduate student union about bargaining stated,

“At this point in the bargaining process, we are beginning to get responses from the University to our proposals. This last session focused on their response to our proposals for anti-discrimination protections and the grievance procedure. We know grads need a grievance procedure to address unfair work practices, sexual harassment, and racial discrimination. The goal of our proposal was to have a process that worked side-by-side with University Title IX and Title VI procedures in order to quickly address workplace issues with a minimum of disruption to grads’ research and work. In this most recent bargaining session, the University gutted our proposal: they want grads to exclusively use existing Title IX and Title VI procedures to address issues of workplace harassment, cutting out our union in the process.

We know these current processes are insufficient. In our survey, among grads who experienced harassment, discrimination, bullying, or disparagement in the workplace, only 23 percent agree that the existing University process sufficiently met their needs.”

<https://brownsugse.com/2019/09/03/we-need-stronger-protections/>

So, too, at Columbia University, as the graduate assistant union headed into contract negotiations in February of 2019, one of the leaders spoke to the graduate assistants’ priorities: “McIntyre says their priorities include dental and vision care, robust sexual harassment and discrimination provisions, on-time pay and expanded parental support.”

<https://columbiapostdocunion.org/contract-negotiations/petition-hd/>

And a December 2019 posting on the graduate union website spoke to highlights in the negotiations, including expanded definitions of forms of harassment and misconduct, and expanded classes of protected works, as well as the right to make such cases grievable and subject to arbitration. <https://columbiagradunion.org>

And at Harvard University, graduate student assistants recently ended a 29-day strike, with one of the key sticking points being the unions’ demands for, “stronger protections against sexual harassment and discrimination with a new third-party arbitration process for complaints” (Garrison, 2020).

Similarly, in public universities, graduate assistant unions have negotiated for these same sorts of protections. Thus, the University of Michigan's Graduate Employee Organization featured among contract highlights, harassment and discrimination language as well as language limiting excessive work hours. <https://www.geo3550.org/wp-content/uploads/2017/10/GEO-ContractDigest.pdf> Along very related lines, the Graduate Employee Organization at the University of Massachusetts, Amherst featured on its website these contract highlights:

“We have also added to existing protections against excessive workloads, with a cap on daily and weekly hours for TAs, TOs, PAs, ARDs and interns.”

“TAs and TOs now have a right under our contract to have access to a gender-neutral bathroom within reasonable distance of their work assignment.”

<https://www.geouaw.org/tag/geo/>

And the University of California's graduate assistant union featured what it termed as “groundbreaking protections against sexual harassment and racial discrimination.”

“UAW 2865 members mobilized during contract negotiations and won survivor-centered protections which can be pursued as alternatives to the flawed Title IX process. The new discrimination protections include interim measures so that student-workers who have reported harassment or discrimination can continue working and learning in a safe environment. The campaign also won the right of student-workers to choose to use the Union grievance process concurrently with a Title IX investigation.”

<https://uaw2865.org/category/anti-sexual-harassment-sexual-violence/>

The concerns and priorities articulated by graduate assistant unions are corroborated by longstanding and widespread evidence of fundamental problems in graduate student assistant and faculty relations as well as widespread failure of universities to sufficiently address these problems. The problems are far from new. One example in the realm of sexual harassment is a study from over three decades ago, of sexual harassment experienced by graduate student women (Schneider, 1987). And recent surveys and evidence speak to ongoing problems in the workplace. One of the most prominent and authoritative of these is the National Academies of Sciences, Engineering, and Medicine consensus report (2018), *Sexual harassment of women: Climate, culture, and consequences in academic sciences, engineering, and medicine*. The Association of American Universities also has a recent report (2019), with comparable findings that roughly 20 percent of graduate women experience sexual harassment. These national reports and surveys are further substantiated by research studies that point similarly to a widely prevalent problem corroborating graduate assistants' expressed concerns (Cantalupo & Kidder, 2017; Rosenthal, Smidt, & Freyd, 2016).

The point is that graduate assistant and faculty relations are far from unproblematic, and that profound threats to positive relations lie not in some presumed culture of collective bargaining but rather in deeper cultures of patriarchy and sexism (as well as of genderism, racism, homophobia and xenophobia). Such entrenched and enduring challenges point, if anything, to the need for clearer and stronger processes to provide meaningful recourse for graduate assistants to have redress and a safe environment in which to study and work. And that is precisely at the heart of what graduate assistant unions are bargaining for in their negotiations with private and public university administrations.

In answer to Question #2, then, there is no evidence that collective bargaining adversely impacts the academic/educational relationship between faculty and graduate assistants, either from the standpoint of graduate assistants or from that of professors. Indeed, there is some evidence suggestive that collective bargaining can actually enhance the academic/educational relationship, in mentoring, advising, and instructional activities. Some of the data reviewed speaks directly to the experience of graduate assistants in private universities. Moreover, the longstanding history of collective bargaining for graduate assistants in public universities, which in multiple regards are comparable to private universities in faculty/graduate assistant interactions, with no apparent adverse effect on faculty/student relations in the public sector casts doubt on one of the rationales underlying the NLRB's proposed rule change. Finally, the existence of serious issues for graduate assistants and graduate students more broadly in the realm of sexual harassment, discrimination against various vulnerable populations, and the experience of international students, all call in to question the presumed overwhelmingly positive and unproblematic nature of faculty/graduate assistant relations that underlies the claim of harm stemming from collective bargaining. Indeed, it may be that the structure and collective recourse afforded by collective bargaining agreements might help address such embedded and ongoing tensions—and that is clear in the consistent prioritizing by graduate assistants who are organizing provisions addressing sexual harassment, discrimination, and treatment of non-resident assistants.

**V. Question #3: If graduate assistants in private universities are accorded statutory rights under the NLRA to collectively bargain will this adversely affect the educational relationship between these assistants and the university, undermining the apprenticeship model of graduate education and collegial nature of academic decision making as well as academic freedoms of and in universities and colleges, introducing industrial and corporate-style private sector models of relations?**

The NLRB's proposed rule change further rests on the rationale and claim that universities are collegial in regards to academic decision making. This, along with academic freedom, and the educational relationship institutions have with graduate assistants (who according to the rationale are apprentices in their studies) would be disrupted by unionization of graduate assistants. Indeed, the argument is that graduate assistant unionization would introduce industrial, corporate-style practices and relations into the academy.

Three types of data and research findings undermine the claims about the collegial university, academic freedom, and the apprenticeship model of graduate assistants' relations with the university. First, data and research findings on the restructuring of academic employment and institutions over the past five decades and the impacts of this on graduate education indicate that the "apprentice" relationship between graduate students and their professors has been weakened and strained by the hiring practices of colleges and universities, and that ascendant corporate models of management in the academy have eclipsed collegial models of academic decision making. Second, graduate assistants themselves are critical of what they characterize as an increased corporatization of universities, which have led universities to treat them less as apprentices learning their profession and more as cheap labor rendering a low-wage service in generating revenue for the institution. Third, data on graduate assistants in unionized settings do not support the view that academic freedoms of the institution or of the assistants is compromised by collective bargaining.

**a. The restructuring of academic employment and relatedly of academic institutions are undermining the apprenticeship model. This represents the ascendance of a more centralized, business and corporate-style management that is aggressively fighting graduate assistant unionization much like private sector companies do.** The basic

restructuring of academic employment over the last five decades contradicts the idea that an apprenticeship model of graduate assistant training to become faculty is threatened by collective bargaining. So, too, the fundamental restructuring of academic institutions into more business-like, corporate-style practices contradicts the idea that collective bargaining by graduate assistants in private universities will make them less collegial in decision making.

A significant point of consensus in research on higher education and academic employment is that there has been a sea change in the structure of academe and of academic careers. That restructuring has long undermined the feasibility of the sort of apprenticeship model posed as normative and prevalent by the NLRB in its proposed rule change, simply by virtue of the profound shift in numbers and proportions of tenure stream faculty. The trend line traced over the decades and recently by scholars tell a story of a sea change from an instructional workforce defined by two-thirds of the professoriate being tenure track faculty to more than two thirds being adjunct (nearly 50 percent) and full-time non-tenure track (nearly 20 percent) faculty, without responsibility for advising, mentoring, and preparing the next generation of tenure stream faculty (Finkelstein, Conley, & Schuster, 2016). And those numbers do not include graduate teaching assistants. The NCES data reveal a 4.8 percent decline from 2005-2015 in tenure-track faculty, a dramatic 21.5 percent increase in non-tenure track faculty, and an equally dramatic 16.7 percent increase in graduate student employees (Kroeger, McNicholas, von Wilpert, & Wolfe, 2018, see Table 1).

Put simply, there are not sufficient numbers of professors to mentor the apprentices, nor are there sufficient numbers of tenure stream (masters') jobs to prepare graduate assistants for. Thus, Kezar, DePaola, and Scott (2019) have written of *The gig scademy*, in which they map the labor force of what they call "the neoliberal university," focused on increasing productivity by hiring greater proportions of lower wage adjunct faculty and graduate assistants in a teaching economy that is increasingly reliant on getting the most instructional productivity possible from increasingly precarious, low-wage academic employees. And these trends define the reality of academic employment in not-for-profit private as well as public universities.

Said otherwise, graduate teaching assistants are now taking on more of the productive, necessary instructional labor for which tenure-track professors in larger proportions and at higher salaries were once more responsible. The increased reliance on graduate teaching assistants to meet the educational responsibilities once provided by more tenure-track professors has more clearly centered them as substantial contributors of economic labor and productivity. And accordingly, their economic role and relationship to the university centers the significance of the terms and conditions of their work as employees. In this context, collective bargaining can be an important structure by which to clarify and distinguish graduate teaching assistants' dual roles in ways that delimit their economic work in universities' instructional economy and facilitate their meeting their educational responsibilities.

A similar pattern defines the research economy of research universities, both public and private, even in Science, Technology, Engineering, and Math fields. As universities become more and more dependent on research revenues, which they require for both the monies and the prestige, the more they hire increased proportions of graduate research assistants and postdoctoral scholars, who represent cheaper, more efficient employees in this regard (Cantwell & Taylor, 2015). The growth area of academic employment in STEM fields is not tenure stream positions, which means that doctoral graduate assistants are less likely to get that aspired to faculty position than they have been in the past (Rhoades & Torres-Olave, 2015). As a recent piece in *Science* indicated:

Over the past 20 years, the portion of U.S. life and health sciences Ph.D.'s employed as tenured and tenure track faculty has declined—while the number of Ph.D.'s awarded in these fields has grown. (Langin, 2019)

The numbers are simply not there for the apprenticeship model to work, either in mentoring graduate research assistants or in their ability to move from graduate training to a faculty position. Indeed, Stephan (2012, p.170) estimates that, “only one in four STEM doctoral students will attain a faculty career.”

Again, put simply, then, the drive and incentives of universities' research economy foregrounds the economic role of graduate research assistants in the production of external research grants and prestige. In the words of one of the country's foremost economists of science, and of STEM graduate education and careers, “In the process [of becoming reliant on R&D income], graduate programs became less about training future researchers and more about getting the research done now” (Stephan, 2013, p. 36). In the process, the academic enterprise “has moved away from the preparation and employment of professionals, and towards the piecemeal and contracts that characterize the research revenue economy.” (Cantwell & Taylor, 2015, p.671)

The economic role of graduate research assistants (and postdoctoral researchers) in providing services to the university in generating revenue is ascendant relative to the educational and professional development roles and processes of these advanced graduate students and postdoctoral scientists. Smaller proportions of tenure track faculty mean reduced possibilities for mentoring graduate research assistants (and postdoc employees) and for these would-be apprentices to secure a faculty position at the end of their advanced education. Again, then, accordingly there is a need for a counterweight to clarify, balance, and delimit the economic role of graduate research assistants in relation to their educational and professional development role.

The restructuring of the academic workforce detailed above has been accompanied by the restructuring and reorientation of academic institutions. Again, there is a broad consensus in the field of research on higher education about basic overall patterns of university restructuring. If there are differences of opinion as to the causes, desirability and effects of the changes, there is nonetheless agreement that at the organizational level, universities have become increasingly entrepreneurial in the pursuit of new revenue streams, have moved to markets in reorienting academic programs and missions, and have become more driven by strategic planning and corporate-inspired marketing, budgeting, and management practices.

Dating back to the late 1970s and the restructuring of the academic workforce, scholars have written in each of the five succeeding decades about *Reduction, reallocation, and retrenchment* (Mortimer & Tierney, 1979), *Academic strategy: The management revolution in American higher education* (Keller, 1983), *Creating entrepreneurial universities* (Clark, 1998), and *Academic capitalism* (Slaughter & Leslie, 1997; Slaughter & Rhoades, 2004), *Ivy and industry* (Newfield, 2003), *Knowledge and money* (Geiger, 2004), and *Two cheers for higher education* (Brint, 2018). Although the particular interpretations of these various market-based and corporate-like developments varies among these scholars, they provide a consist rendering and overall reading of American higher education’s path, across both not-for-profit private and public research universities.

Central to the above developments are changing relations among university managers and faculty, and in changing patterns of institutional governance. The collegial model of academic decision making posed by the NLRB in its proposed rule change, to the extent that it ever fully described U.S. universities that have long been defined by the strength of their campus management (Clark, 1983) has been superseded by increasingly corporate forms of management and labor relations. One scholar’s tracing of these changes is framed as, *The Fall of the Faculty: The Rise of the All-Administrative University* (Ginsburg, 2011). The focus of the book is on the disproportionate rise in numbers of managerial personnel relative to professors, as well as on the increased costs associated with these non-academic, administrative personnel and their disproportionate influence on the institution’s trajectory. The result is what Slaughter and Rhoades (2004) have identified as “enhanced managerial capacity” that comes with “academic capitalism. That pattern in universities of growth in managerial personnel and in their salaries as a proportion of organizational expenditures, alongside decreasing proportions and expenditures on tenure stream faculty who do the production work of the academy mirrors similar developments in the private sector economy over a comparable two-decade time period (Goldstein, 2014). There, too, increased proportions of and expenditures on managerial personnel are matched by increased managerial control of the increasingly precarious positions of production workers.

The defining work on how these trends affect patterns of faculty and shared governance is Gerber’s (2014), *The rise and decline of faculty governance*. The book traces the rise in recent decades of business strategies in higher education that map onto reduced autonomy and influence of tenure stream faculty and the increased hiring of lower wage, contingent academic employees. Universities have become more business-connected in their academic programs as well as their governance, business-like in their practices and programmatic and strategic decision making. Notably, nowhere are the business connections and practices stronger than in not-for-profit private research universities, which have boards of trustees that are increasingly tightly connected with concentrated sectors of industry, with direct implications for governance (Barringer, Taylor, & Slaughter, 2019).

It makes little sense, then, given this mass of historical and current evidence to foretell or offer portents of the adverse effects of graduate assistant unionization on the collegial academic decision making of private universities, which will allegedly lead to corporate-style decision-making and governance. The overwhelming evidence is that such developments have already

taken place in American research universities, quite independent of graduate assistant unionization.

Moreover, many research universities have been and are anything but collegial in their anti-union tactics. Indeed, graduate assistants are quite clear as to who the opposition is in their efforts to unionize. In a study of graduate assistants in seven universities (five of which were private), Falasco and Jackson (2004, p. 790) found that an overwhelming majority (82.5 percent) of survey respondents identified “administrators” as “the chief source of resistance to unionization efforts.” More than just the numbers, in their open-ended responses to this question, some graduate assistants were quite unhappy with the aggressive, “hardline” tactics of the university. In some cases, respondents charged their university with unfair labor practices, harassment, and intimidation. Julius and Gumpert (2003, p.199) speak in part to this issue of university resistance to unionization, noting that it can often be very corporate like.

“By and large, the responses of American universities to organizing drives of graduate and research personnel, particularly where the full-time faculty are not organized (e.g., Yale), resemble companies fighting industrial unions...”

In fact, they not uncommonly hire the same “union avoidance” firms that are hired by companies in the private sector.

One particularly powerful example of how such business-like union avoidance tactics run quite counter to the idea that the relationship between universities and their graduate assistants are characterized by educational and collegial norms is in relation to international graduate assistants and unionization. The example lies in public and private universities messaging international graduate students in regard to unions and strikes, suggesting to them that involvement in such activity might lead to them losing their visas (Bittle, 2017).

“On August 31, in response to a mounting graduate-student unionization campaign, Washington University in St. Louis Provost Holden Thorp e-mailed students notifying them of a document that provided answers to frequently asked questions about unionization. The document paints unions as risky, irrational ventures that may not result in material gains for students. In its later pages, when the office takes up the question of international students’ involvement in a potential union, the FAQ’s tone turns sinister. In answer to the question, “Could a strike potentially have an impact on my F-1 visa status?” the office becomes unequivocal: First, the office points out, if international students on an F-1 visa lose their student status, they would no longer be allowed to remain in the country and would have to leave immediately. “Furthermore,” the memo says, “universities are legally required to report to U.S. Immigration and Customs Enforcement...if a student fails to maintain status.” Washington University, the memo effectively implies, would be legally bound to call ICE if international students went on strike.”

In fact, though, as the article points out, it is the university, not ICE that determines whether a graduate assistant is still a student, and for a university to revoke that status in response to unionization or a strike would be an unfair labor practice. Such messaging of what is misleading information has also been reported at Northwestern, Columbia, Princeton, Cornell, and five campuses of the University of California, and at Pennsylvania State University (Quilantan, 2018; Schackner, 2018). And it was employed as well by the administration at the University of Oregon prior to a threatened strike action by the Graduate Teaching Fellows Federation, the

graduate assistant union there, which filed an unfair labor practice complaint.

<http://gtff3544.net/wp-content/uploads/2014/11/International-Grad-CnD-Letter.pdf>

It would be hard to construe such actions by university administrations as stemming from a concern for the educational interests of international graduate assistants.

**b. Graduate assistants identify and respond to corporatization of universities, which they also see playing out in the treatment of them more in terms of their economic value to the university than of the value of their own education.** The title of Rhoads and Rhoades' (2005) article, based on 40 interviews with graduate assistants in four universities, one of which was a private (NYU), captures the sentiment of the students—Graduate employee unionization as symbol of and challenge to the corporatization of U.S. research universities.” Rather than unionization of graduate assistants leading to an industrial model of management, graduate employees talk about how their decision to organize was in part motivated by their recognition that the university has become more and more corporate in its practices.

At the center of the corporatization identified by graduate assistants is the institutions' increased utilization of them as relatively cheap labor. In the authors' words:

“At the heart of the conflict between graduate teaching assistants and university administrations has been debate over the rationale for the use of graduate students as part-time instructors. University administrators have argued that graduate students gain a valuable apprenticeship experience as a part-time teacher; therefore, they have often argued, in response to campaigns to unionize graduate employees, that graduate students are apprentices, not employees. But such claims ring hollow to most graduate teaching assistants, many of whom speak of few opportunities for full-time faculty jobs down the road, teaching outside their areas of academic study, teaching the same large classes for several years, and grading stack after stack of blue books.” (p.267)

In the words of graduate employees who were interviewed:

“TAing is a good experience, but I don't think the reason we TA is because they want us to have teaching experience. I think they do it because they want to save money. We're basically cheap labor. Giving us the teaching experience is kind of the argument they give, but I don't think someone needs to TA for six years if they are simply learning to teach. Maybe a few quarters would do it. ... It's just that if TAing is to gain teaching experience, we don't need to do it for so long.” (Member AGSE/UAW Local 2865, UCLA/University of California)

“The hiring of faculty has certainly gone down and the chance of us getting faculty positions is not very high. I mean none of us will be going on very soon to be full professors and do what our advisers are doing. A lot of us are looking at adjuncts or postdocs and so it's harder and harder to say what we are doing is an apprenticeship.” (Member GSOC/UAW Local 2110, NYU)

“I think that the apprenticeship model has failed, especially in certain fields. There are students teaching classes that don't even relate to their fields. So there's no ground to stand on to say that that's part of their learning. It's cheap labor.” (Member AGSE/UAW Local 2865, UCLA/University of California)

“It seems clear that the role of the graduate student has changed rather dramatically. What we have is much more of an employment relationship than one of mentee working under a particular professor. Very often, at least at Michigan, people are teaching classes

that aren't under the supervision of their academic advisor, and often they teach classes outside of their specialization." (GEO/AFT Local 3550, UM)

Indeed, as Falasco and Jackson (2004, p.774) state, "In fact, the graduate student teaching assistants currently attempting to organize on private campuses are doing so in response to universities that increasingly apply a corporate strategy."

In response to efforts by graduate assistants to unionize, many private universities have invoked the idea of an apprenticeship model as part of their core claim that these assistants are students in training, not employees. Yale University's administration has been a clear example of employing this strategy. In the words of a scholarly analyst of the discourse surrounding Yale's so-called "grade strike" in 1995:

"In resisting the GESO's efforts to organize graduate students, Yale attempted to fix the identity of the strikers by claiming that graduate assistantships were equivalent to apprenticeships. In March of 1995, for example, GESO voted to conduct a week-long strike to take place in April. Yale's Dean, Thomas Appelquist, contended that a teaching assistantship "is a kind of apprenticeship" ("Grad Students Plan," 1995, p. 42). Implicit to this notion of apprenticeship is the idea that as apprentices, graduate assistants were primarily students and not employees." (Discenna, 2010, p.25)

The graduate student organization produced a document that challenged this view of graduate assistants as apprentices (GESO, 1995). In its words,

"Professional training and graduate financial support are not the primary rationales behind the teaching fellow program. . . . [T]he teaching fellow program exists to provide Yale undergraduates with a top-quality education. It is primarily for the benefit of undergraduate education, and not graduate education, that graduate teachers lead sections, work with student writing, and grade exams." (p. 2)

As Discenna indicates (2010, p.29), the "True Blue" document countered the administration's apprenticeship claim that teaching assistantships were about preparing graduate assistants for future faculty employment, "In other words, the teaching fellowship program employs graduate students not to further the educational objectives of graduate students, but to staff undergraduate classrooms, regardless of the educational goals of the TA." Subsequent graduate assistant leaders in GESO pointed out that the university administration was who was introducing a corporate model, treating graduate assistants as low-wage workers, noting that in the decade and a half leading up to the grade strike and subsequent years of ongoing organizing in the late 1990s, the number of full-time faculty at Yale had decreased, whereas the number of graduate teaching assistants grew fully by one-third (Falasco & Jackson, 2004). That counterpoint to the administration's position was furthered by graduate assistants' recognition of a job market in which the master's job of a tenure stream faculty position had become increasingly elusive.

It is not just the perception of graduate assistants that the apprenticeship model is not working. Research findings corroborate that view. For example, in a 2003 article (followed by two books on the subject), Ann Austin (now interim Associate Provost for Faculty and Academic Staff Development at Michigan State University), indicated that, "[R]eports of current doctoral students raise concerns about how well the apprenticeship model is working." (p.129) More than that, authoritative national reports such as one by the Association of American Universities

(1998) were also raising such concerns. In speaking to preparing graduate assistants for teaching, for example, Austin (2003, p.130) states,

“In short, the teaching apprenticeship opportunities, if they occur at all, often are arranged more in response to the institution’s needs to teach undergraduates rather than the needs of an individual doctoral student to develop over time as a competent and experienced teacher.”

In other words, the work of graduate teaching assistants is driven not by the educational needs and development of the graduate employee, but by the economic imperatives of the employing academic department and university. Along these lines, Austin (2002, p.112) also notes,

Based on data from a survey of 9,645 students in eleven disciplines at 28 major research universities, Golde and Dore (2000, p. 6) concluded that ‘what students are trained for is not what they want, nor does it prepare them for the jobs they take.’”

She recommends much more attention be devoted to regular mentoring, advising, and supervision. In summarizing her findings in relation to other studies, she indicates that, “All of these studies show that graduate students who aspire to the professoriate perceive that they do not receive systematic preparation in many aspects of the job.” (Austin, 2002, p.113)

What this and subsequent research on graduate education have clarified is that there is a structural challenge, borne of the patterns of restructuring discussed above in this comment. Indeed, Gardner and Mendoza (2010) organize their work accordingly. Their book critiques existing models of graduate education, faculty and graduate assistant interaction, and socialization for various types of careers other than academic ones. They tailor their recommendations to address existing contexts and challenges regarding faculty and graduate student relations and socialization given gender and racial dynamics as well as due to a context of academic capitalism that influences and is expressed in institutional practices, faculty/graduate assistant interactions, and future careers for current graduate assistants. It is those sorts of structural challenges that graduate assistants have been seeking to address in private as well as public universities in their organizing and contract campaigns.

**d. Empirical evidence does not support the claim that the unionization of graduate assistants represents a threat to academic freedom in and of universities.** Although the NLRB’s proposed rule change regarding graduate assistants suggests that their unionization would compromise academic freedom, the empirical evidence is to the contrary. That is true whether one is referring to the views of graduate assistants or those of faculty.

In his study of graduate student unionization at four universities, Hewitt (2000) found that 95 percent of faculty believed that the unionization of graduate assistants at their university “did not inhibit the free flow of ideas.” (see Table 1)

In their survey of graduate assistants at seven universities, Falasco and Jackson (2004, p.800) likewise found little support for the NLRB’s claim. Their survey found that over three quarters of respondents “believe that collective bargaining with their university would have no impact upon academic freedom.”

Along similar lines, Rogers, Eaton, and Voos (2013) found that union representation of graduate assistants was unrelated to graduate students' sense of academic freedom in teaching related matters or in the overall climate of academic freedom.

Perhaps most compelling are the contracts negotiated by graduate assistant unions. Roughly one-third of them include provisions ensuring the academic freedom of bargaining unit members (Herbert, 2019). Particularly relevant to the concerns articulated in the NLRB's proposed rule change regarding the potential adverse effect of graduate assistant unions' on the freedom of institutions to make educational and academic decisions, there is no evidence in the collective bargaining agreements of graduate assistants that these employees seek to hamper that decision making (Herbert, 2019). Further, as Herbert documents (2019, p.15), such contracts almost all have management rights clauses, and these preserve the decision-making authority of management in academic, programmatic, and strategic planning matters.

In answer to Question #3, then, there is no evidence that collective bargaining adversely impacts the educational relationship between graduate assistants and the university, undermining the apprenticeship model of graduate education and the collegial nature of academic decision making, or that it compromises academic freedom in and of universities, introducing corporate style, private sector models of relations. Quite the contrary.

**VI. The assumption of the fundamental difference between private and public universities does not recognize they are not for-profit entities.**

It is worth emphasizing from the start, that while there are differences between not-for-profit private and public universities, for instance in their governance structure (e.g., in how their boards of trustees are selected), both sets of universities are not-for-profit entities. Each are subject to the same standards of accreditation. Moreover, not-for-profit private universities receive substantial federal funding in the form of financial aid and grant monies, which plays out in the support and work of graduate assistants. Further, public research universities receive a relative small share of their monies from direct public state appropriations (generally less than 25 percent, and in the most prestigious public universities, many of which have graduate assistant unions, the percentage is less than 15 percent). And not-for-profit private and public universities compete in the same markets for graduate students, graduate assistants, and academic careers.

As indicated in previous sections of this comment, each of the three questions posed in opening the comment have considered data and research bearing on similarities between public and private universities in regard to graduate assistants' work and experience and their relationship to the university. The evidence is that: federal governmental entities treat graduate assistants in these contexts the same; there is no evidence of differences in views of the graduate assistants or of faculty in regard to the effect of bargaining on relations between faculty and students, and that there is evidence of prevailing and similar tensions experienced by graduate assistants; and each sector has experienced fundamental restructuring of academic work and of the institution itself, in ways that reflect a more corporate, business-like approach to decision making and relations. Thus, the evidence regarding graduate assistant unionization in public universities for five decades bears directly on and should be considered in decisions and rule making by the NLRB.

## **VII. Summary and conclusion**

The proposed NLRB rule change would reverse a ruling just four years ago in *Columbia University*, 364, NLRB No. 90 (2016). That earlier ruling reversed a ruling in *Brown University*, 342 NLRB 483 (2004), which in turn had reversed an earlier ruling in *New York University*, 332 NLRB 1205 (2000). Although the NLRB assumed jurisdiction over faculty labor matters in private colleges and universities in 1972, it had not recognized graduate student assistants as employees eligible for collective bargaining under the NLRA until 2000, when the NLRB ruled that graduate student assistants were employees with statutory rights to collectively bargain under the NLRA.

Each of the NLRB's above rulings were made in response to cases before the Board. Now, the NLRB has proposed a rulemaking change that would revoke the employee status of graduate assistants from about 81,000 people, denying them the right to choose whether to engage in collective bargaining under the NLRA. Notably, Risa Lieberwitz, a professor of labor and employment law at Cornell University, explains that the NLRB's announcement is somewhat of a departure in practice (Langin, 2019). It is the view of ASHE that consideration of such a step, to revoke a category of employees' rights should be based on evidence, on the merits of a particular case, or on (new) facts and findings regarding developments in higher education and experiences of collective bargaining by graduate assistants over five decades, as was done in the 2016 ruling.

The proposed rule change is based largely on revisiting and restating an argument and rationale invoked in the 2004 ruling as well as rulings in the mid-1970s. That argument and rationale is that graduate assistants are "primarily students," invoking a sort of "primary purpose" test from NLRB rulings in the 1970s (Falasco & Jackson, 2004, p.762). Yet, the dissenter in those rulings invoked the test of providing a service for which they receive compensation (*ibid.*, pp.763-5). The categories of student and employee are not mutually exclusive, nor is one simply superordinate to the other.

The NLRB's rule change is being proposed on the basis of no new case and with no new evidence. Yet these are not hypothetical issues and matters. There are matters of fact, evidence, and research findings that bear directly on the issues and questions at hand. It is the hope of ASHE, with its comment, that the NLRB will examine the available data in this comment to come to its ultimate decision based on the available evidence.

To summarize, ASHE's comment is organized around addressing and answering three questions that underlie the proposed rule change, along with an assumption underlying all of the questions:

- (1) Are graduate student assistants in private universities only or primarily students, or are they employees providing substantial economic services to universities as well as being students?
- (2) If graduate assistants in private universities are accorded statutory rights under the NLRA to collectively bargain, will this adversely impact the academic/educational relationship between these graduate assistants and their professors?
- (3) If graduate assistants in private universities are accorded statutory rights under the NLRA to collectively bargain will this adversely affect the educational relationship between

these assistants and the university, undermining the apprenticeship model of graduate education and the collegial nature of academic decision making as well as academic freedoms of and in universities and colleges, introducing industrial and corporate-style private sector models of relations?

Underlying these three questions is an unexamined assumption underlying the proposed rule change by NLRB. That assumption is that the work and roles of graduate assistants in private universities are so substantively different from the work and role of graduate assistants in public universities, where within many of the nation's leading institutions of higher education, including so-called "public ivies" such as the University of California, and the University of Michigan, graduate assistants have been unionized for decades, that the experience of graduate assistant unionization in these institutions does not bear on the questions at hand for private, not-for-profit universities.

In answer to Question #1, the evidence makes it clear that graduate assistants are employees as well as being students, that their occupational status in providing work for income in return for providing service to the university, that the taxes they pay to the IRS on that income are in recognition of graduate assistants' substantial economic relationship between graduate assistants and the employing university, and that their supervisory role of authority with Title IX mandatory reporting duties as a responsible employee and officer of the university (as defined by the universities themselves) individually and together represent substantial and significant service and benefit to the university by virtue of being employees, beyond their status as graduate students.

In answer to Question #2, there is no evidence that collective bargaining adversely impacts the academic/educational relationship between faculty and graduate assistants, either from the standpoint of graduate assistants or from that of professors. Indeed, there is some evidence suggestive that collective bargaining can actually enhance the academic/educational relationship, in mentoring, advising, and instructional activities. Some of the data reviewed speaks directly to the experience of graduate assistants in private universities. Moreover, the longstanding history of collective bargaining for graduate assistants in public universities, which in multiple regards are comparable to private universities in faculty/graduate assistant interactions, with no apparent adverse effect on faculty/student relations in the public sector casts doubt on one of the rationales underlying the NLRB's proposed rule change. Finally, the existence of serious issues for graduate assistants and graduate students more broadly in the realm of sexual harassment, discrimination against various vulnerable populations, and the experience of international students, all call in to question the presumed overwhelmingly positive and unproblematic nature of faculty/graduate assistant relations that underlies the claim of harm stemming from collective bargaining.

In answer to Question #3, there is no evidence that collective bargaining adversely impacts the educational relationship between graduate assistants and the university, undermining the apprenticeship model of graduate education and the collegial nature of academic decision making, or that it compromises academic freedom in and of universities, introducing corporate style, private sector models of relations. Quite the contrary.

In addressing an assumed distinctiveness of not-for-profit private universities from their public university peers in regard to the work and relations of graduate assistants to faculty and to the university, the evidence is that: federal governmental entities treat graduate assistants in these contexts the same; there is no evidence of differences in views of the graduate assistants or of faculty in regard to the effect of bargaining on relations between faculty and students, and that there is evidence of prevailing and similar tensions experienced by graduate assistants; and each sector has experienced fundamental restructuring of academic work and of the institution itself, in ways that reflect a more corporate, business-like approach to decision making and relations. Thus, the evidence regarding graduate assistant unionization in public universities for five decades bears directly on and should be considered in decisions and rule making by the NLRB.

In conclusion, then, certainly graduate assistants are students, but just as certainly they are employees who are providing significant and substantial service to the university, for which they are compensated. Their economic service is not incidental to the primary purposes of graduate education, because that economic work and relationship to the university has, in fact, become integral and essential to the university's functioning. So much so that universities are increasingly framing their relationship to graduate assistants in terms of those assistants' economic role in generating revenue and prestige, in ways that are not driven by and are even inconsistent with the educational goals of those graduate student assistants.

Moreover, the justifying rationales offered by the NLRB in support of the proposed rule change are contradicted overwhelmingly by existing evidence on the relationships between faculty and graduate assistants, on the relationships of graduate assistants to their universities, and on the effects of graduate assistant unionization.

In short, the NLRB's proposed rule change would run directly contrary to the empirical evidence, to substantial changes in the academy that have involved universities prioritizing the economic role of graduate assistants in private as well as public universities. In light of these facts and developments, the ASHE comment takes the position that the proposed rule change is unwarranted by evidence, unlikely to ensure labor stability, and would be imprudent and disruptive in disenfranchising tens of thousands of graduate assistants in private universities from the right to decide whether they wish to pursue collective bargaining under the auspices of the NLRA.

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