UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

THE GEORGE WASHINGTON UNIVERSITY

Employer

and

Case 05-RC-188871

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 500, a/w SERVICE EMPLOYEES INTERNATIONAL UNION, CTW, CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

Service Employees International Union, Local 500 ("the Petitioner") seeks to represent a unit of all full-time and regular part-time resident advisors ("RAs") employed by The George Washington University ("the Employer"), excluding all other employees, managers, guards, and supervisors as defined in the Act. The petitioned-for unit includes approximately 110 employees.

A hearing was held on December 7, 2016, before a hearing officer of the National Labor Relations Board (the Board). At the conclusion of the hearing, the parties orally argued their positions, and subsequently filed post-hearing briefs.[1]

The Employer argues that I should dismiss the petition, contending that the RAs are not "employees" within the meaning of Section 2(3) of the Act, and, even assuming the RAs are

[1] An unsolicited post-hearing brief was filed on behalf the Employer by amici: Association of College and University Housing Officers – International, American Council on Education, American College Personnel Association, NASPA – The Student Affairs Administrators in Higher Education, American Association of State Colleges and Universities, Association of American Universities, Association of Governing Boards of Universities and Colleges, Association of Independent Colleges of Art and Design, Association of Public and Land-grant Universities, College and University Professional Association for Human Resources, Council of Independent Colleges, National Association of College and University Business Officers, and National Association of Independent Colleges and Universities.

employees, that the Board should decline for policy reasons to assert jurisdiction in this case.[2] The Petitioner asserts that the RAs receive compensation in the forms of a stipend and free housing in return for serving as RAs, and are appropriately classified as employees. The Petitioner further claims that policies of the Act, as set forth in *Columbia University*, 364 NLRB No. 90 (August 23, 2016) support the direction of an election in the petitioned-for unit.

As described more fully below, based on the record and relevant Board cases, including *Columbia University*, I find that the RAs are "employees" within the meaning of the Act and that there are no compelling policy reasons for declining to assert jurisdiction in this case. Accordingly, I am directing an election in the petitioned-for unit.[3]

I. FACTS

A. The Employer's Operation

The Employer is a private university that offers both undergraduate and graduate programs.[4] The Employer operates two campuses, both located in Washington, D.C.

The Employer requires all of its undergraduate students to live in on-campus housing until their senior year, as the Employer considers that living on campus is an important part of a student's educational experience. Accordingly, there are approximately 7,400 students housed in 26 residence halls between the Employer's two campuses.

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[2] The Employer argues in its Statement of Position that I should apply the test set forth in *Brown University*¸ 342 NLRB 483 (2004) to determine whether the RAs are Section 2(3) "employees." Pursuant to Section 102.66(c) of the Board's Rules and Regulations, I directed that this issue would not be litigated at the hearing, and that the proper standard is set forth in *Columbia University*, 364 NLRB No. 90 (August 23, 2016), which overruled *Brown University.*

[3] Although the petition seeks all "full-time and regular part-time" RAs, the evidence shows that the RAs do not work defined work schedules, and thus that there is no distinction between "full-time" and "regular part-time" RAs. There is no dispute that the Petitioner is seeking to represent all RAs employed by the Employer.

[4] The parties stipulated, and I find, that the Employer is engaged in the operation of a private educational institution in Washington, D.C. In conducting its operations during the 12-month period ending November 30, 2016, the Employer derived gross revenues available for operating expenses in excess of $1 million, and purchased and received at its Washington, D.C. facility, goods valued in excess of $5,000 directly from points located outside the District of Columbia. The parties further stipulated, and I find, that during the time period described herein, the Employer conducted its business operations within Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C.

The residence halls are staffed by RAs, who must be full-time undergraduate students enrolled in a degree-granting program at the Employer, and have completed their first year of studies. RAs are expected to serve as role models for students, and thus, RAs must be in good academic and judicial (i.e. disciplinary) standing. The Employer explains that its requirement for RAs to be undergraduate students is necessary for the RAs to develop a "peer-to-peer mentoring relationship" with their assigned residents, and that RAs are an important part of the Employer's residence life program, which is an extension of its academic program. The Employer currently has 110 RAs spread across its 26 housing facilities. Of the 110 RAs, 32 are seniors, 47 are juniors, and 31 are sophomores. Only a small percentage of RAs serve for the three-year maximum eligibility period. Of the 110 RAs, 71 are serving in their first year of eligibility, 30 are in their second year, and 9 are in their third.

The RAs in each residence hall are supervised by a residence director,[5] who oversees a portion of, or an entire residence hall, and who must be a graduate student enrolled at the Employer. Above the residence directors are area coordinators. Area coordinators are responsible for managing between one and six residence halls. Area coordinators are not required to be students at the Employer, though they can choose to take courses if they wish. Undergraduate students cannot serve as area coordinators. The area coordinators report to one of two Directors of Residential Experience, with one director responsible for first-year students and the other for students in their second through fourth years. The directors are supervised by Assistant Dean Stewart Robinette, who oversees the Employer's Office of Residential Engagement. The Employer's Center for Student Engagement ("CSE"), which includes the Office of Residential Engagement, is overseen by Associate Dean of Students Tim Miller.

B. The RA Application and Selection Process

During the fall semester each year, the CSE advertises the RA positions for the next academic year by distributing marketing materials, including the RA position description, across the Employer's campuses. Students interested in becoming RAs must submit an application to the Employer. At the time of the application, students must be in good academic and judicial standing, and submit a current résumé with their completed application. Thereafter, applicants must complete a series of interviews with current and former RAs, residence directors and staff from the Employer's other departments. The hiring decisions are made collaboratively by the area coordinators and any residence directors who will be returning for the next academic year. In making these decisions, the Employer seeks to determine whether the RA applicant has the ability to be a role model for students, and whether the applicant's motivation for seeking the position demonstrates commitment and passion to fulfilling the responsibilities of the RA position. For RAs who wish to return for a second or third year in the position, the Employer

[5] This position is sometimes described in the record as "resident director."

also considers the applicant's past mid- and end-year evaluations, which are prepared by the residence director.

Students selected to serve as RAs must enter into a four-page Resident Advisor Employment Agreement. The agreement describes the Employer's "expectations and employment terms" for RAs. The agreement describes items such as compensation, the beginning and end dates of the RA's employment period, training schedule, supervisory hierarchy, work rules and performance expectations, and policies concerning confidential information. RAs must also agree to comply with the Employer's policy concerning the release of student information and treatment of confidential information, which is part of the Employer's efforts to comply with the Family Educational Rights and Privacy Act of 1974 ("FERPA").[6] All RAs must sign the RA employment agreement and the policy on confidential information as a condition of employment.

C. The RAs' Terms and Conditions of Employment and Job Functions

1. Compensation

In exchange for their services, RAs receive a stipend of $2,500 for the academic year, which is paid in biweekly installments, less applicable tax withholdings. In addition to the stipend, RAs also receive free on-campus housing, which is valued at $12,665 per year.[7] If an RA leaves the RA job, the Employer ceases the stipend payments and housing benefit, and the RA is expected to move out of their RA room within 24 hours. If the former RA will remain at the Employer as a student, she is responsible for paying, on a prorated basis, their housing costs for the remainder of the academic year. There is no evidence or claim that RAs receive academic credit or make other progress toward their undergraduate degrees for performing their RA duties.

2. Training

New and retuning RAs participate in a mandatory two-week training program prior to the start of the fall semester. During the training, RAs attend a series of breakout sessions designed to educate them about the expectations of their position, the resources available to them, and the resources available to the students they serve. RAs also receive training about how to deal with

[6] 20 U.S.C. § 1232g; 34 CFR Part 99

[7] The cost of housing varies between the Employer's residence halls; for RAs, the Employer has administratively set the value of their housing at $12,665, regardless of their assigned residence hall.

various scenarios they may be expected to encounter during the performance of their duties, such as students experiencing mental health issues, or claims of sexual assault.

In addition to the fall training, RAs are also required to attend monthly forums, which serve as refresher courses or training on various topics. They also attend any required meetings and workshops to learn information necessary to complete their duties. RAs must also return to campus for a three-day winter training session before the second semester begins.

3. Responsibilities and Duties

The RA position description organizes the RAs' job duties into four main categories: (1) Know Your Residents; (2) Connect Your Residents; (3) Maintain the Physical, Social and Education Environment; and (4) Administration, Conduct, and Performance. Each of these categories contains its own list of the Employer's expectations of the RA position. For example, under the "Know Your Residents" heading, RAs are expected to "[d]evelop and initiate an initial 6 week plan with their supervisor that includes specific goals and strategies for individually interacting with each student." As part of "Connect Your Residents," RAs should, each semester: independently coordinate and execute a minimum of two residential community programs and/or initiatives; accompany residents to a minimum of two [Employer] community programs and/or initiatives; and accompany residents to a minimum of two [Washington, D.C.] area programs and/or initiatives. RAs should also "[d]emonstrate individualized approach to meeting resident needs based on established relationships/sustained interactions" and "[c]onnect residents to student organizations or events that are of interest to the residents." RAs must "immediately escalate information about students of concern" to the Employer. As part of fulfilling these job expectations, RAs are responsible for developing programs and activities for the student communities they serve. The residence directors provide the RAs with models, recommendations and feedback about the RA's proposed programs, but they do not dictate specific programs or activities the RA must implement.

Within their "Maintain the Physical, Social and Education Environment" duties, RAs are expected to create and maintain bulletin boards with relevant and timely content, and walk and report any community space (e.g. lounge or kitchen) issues weekly. RAs must also actively and immediately address violations of community standards or policy, and immediately notify the Employer's police department of all policy violations that impact the health and safety of residents. As part of their employment agreement, RAs are responsible for reporting policy violations in all residence halls and other locations on campus, regardless of whether it is their building or elsewhere. There is no evidence that other students are required to report policy violations, or to respond when other students are experiencing mental health issues or are in other emergency situations.

The RAs' "Administration, Conduct, and Performance" duties include attending all required meetings, trainings, workshops and departmental initiatives. RAs are also responsible

for submitting mandatory weekly reports, called "reflections," to their residence director by completing an Employer-provided form. The reflections form includes a section where the RAs summarize the interactions they've had with residents during the week, any incident reports, facilities issues, or other concerns they may have. These weekly reflections are used as part of regular meetings between the RAs and their supervising residence director.

The Employer does not require the RAs to work a set schedule or a specific number of hours per week, and it does not track the number of hours RAs work. Nonetheless, the RA employment agreement explains that the Employer expects RAs to perform approximately twenty hours of work weekly, which should include ten hours of regularly-scheduled "Hall Hours," consisting of: five hours in their room/on their floor being available to residents; four hours walking around the halls and connecting with residents Sunday-Thursday; and a minimum of one hour between 10:00 p.m. and 1:00 a.m. Thursday-Saturday spent walking their floor and building to connect with residents. RAs are permitted, and often are, involved in other aspects of campus life, such as other on-campus jobs, internships, or student activities. However, the Employer requires that RAs agree to "make the Resident Advisor job his/her first priority, second only to his/her academic endeavors." Thus, RAs must receive advance permission from their residence director before engaging in other paid employment, internships, holding a major office in an organization, or making other commitments. Further, an RA's participation in any internships or other employment is limited to ten hours per week.

In addition to the job duties described above, RAs are required to comply with several Employer policies, many of which are set forth in the RA job description and employment agreement. One such policy requires that RAs sleep only in their assigned rooms, unless they receive advance permission from their residence director. Further, the Employer limits the RAs to using one weekend or three days of "vacation" per month. The Employer requires RAs to sleep in their assigned rooms so they will be accessible to any student-residents who may need assistance during those hours. Relatedly, the Employer requires that RAs must limit their overnight guests to no more than three nights per week, and if the Employer determines that overnight guests are affecting an RA's performance, it may be impose further guest restrictions. The RA employment agreement also prohibits RAs from engaging in "physically and/or emotionally intimate relationships" with residents in their buildings, or any member of the CSE graduate or professional staff.

RAs are subject to discipline, up to termination, if they fail to abide by the Employer's policies. An initial failure to perform their duties may result in oral warnings from the residence director. Continued poor performance may result in termination from the position, and removal from consideration for the upcoming school year. RAs may also be terminated if they fail to remain in good academic or judicial standing, or if they violate the Employer's rules concerning the handling of confidential information.

II. ANALYSIS

A. Legal Standard

As noted earlier, prior to the hearing and in response to the issues identified in the Employer's Statement of Position, I determined that the appropriate legal standard in this case is the Board's decision in *Columbia University*, 364 NLRB No. 90 (August 23, 2016), which overruled *Brown University*¸ 342 NLRB 483 (2004) — the standard advocated by the Employer. In *Columbia University*, the Board held that student assistants who have a common-law relationship with their university are statutory employees under the Act. *Columbia University,* 364 NLRB, slip op. at 2. In determining whether a common-law employment relationship exists, the Board examines whether the putative employees performs services for another, under the other's control or right of control, and in return for payment. *Id.* at 2-3, citing *Boston Medical Center*, 330 NLRB 152, 160 (1999).

The Board's holding in *Columbia University* is based upon a combination of the broad definition of "employee" found in the statutory text of Section 2(3) of the Act, and the Supreme Court's observation that the "breadth of [Section] 2(3)'s definition is striking: the Act squarely applies to 'any employee'" and "includes any 'person who works for another in return for financial or other compensation.'" *Columbia University*, 364 NLRB, slip op. at 4-5, citing *Sure-Tan, Inc. v. NLRB*¸ 467 U.S. 883, 891 (1984); *NLRB v. Town & Country Electric*¸ 516 U.S. 85, 90 (1995). The Board concluded that it is appropriate to extend the Act's coverage to students working for universities when the broad definition of "employee" is applied to the Act's policy of "encouraging the practice and procedure of collective-bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." *Id.* at 2.

The employer-employee relationship is demonstrated where the evidence shows each element of the three-part common law test is present, rather than by comparing the relative size of the parties' economic, educational, or other non-economic relationships. Thus, student-employees may be covered under the Act by virtue of their employment relationship with their university-employer, and such coverage is not foreclosed by the existence of some other, additional relationship that the Act does not reach. *Id.*

The party seeking to exclude an otherwise eligible employee from the coverage of the Act bears the burden of establishing a justification for the exclusion.[8] Accordingly, it is the

[8] See, e.g., *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001) (party seeking to exclude alleged supervisors bears burden of proof); *Montefiore Hospital and Medical*

Employer's burden to establish that the RAs are not "employees" within the meaning of Section 2(3) of the Act.

B. The RAs are "Employees" within the Meaning of the Act.

Under the test established by the Board in *Columbia University*, I find that the RAs are "employees" within the meaning of Section 2(3) of the Act. The evidence shows that the RAs have a common law employment relationship with the Employer because they: (1) perform services for the Employer; (2) are subject to the Employer's control; and (3) perform these services in return for payment. I find that the RAs' educational relationship with the Employer does not preclude a finding that they are Section 2(3) employees.

The Employer argues that the standard in *Columbia University* does not control the issue of whether RAs are employees under the Act for two reasons. First, the Employer argues that the RA role is fundamentally different from the role of the teaching or research assistants at issue in *Columbia University*, in that the teaching assistants "frequently take on a role akin to that of faculty," and the research assistants' work was "associated with grants from which the University receives substantial income." In contrast, the Employer describes the RA role as merely, "undergraduate students who reside in the University's resident halls in order to have an informal, peer-to-peer mentoring relationship with, and serve as role models for, their fellow undergraduate students." The Employer further argues that no other employees perform similar functions as the RAs, unlike in the teaching assistants and research assistants in *Columbia University*, who performed functions similar to faculty members. Additionally, the Employer argues that RAs have wide discretion as to how they will establish mentoring relationships with other students, as the Employer does not determine what activities RAs will engage in with their residents, or when they will engage in these activities. Accordingly, the Employer claims, the RAs do not meet the common law definition of "employee."

Second, the Employer contends *Brown University*, 342 NLRB 483 (2004) is the correct standard for determining whether the RAs are employees within the meaning of the Act. The Employer argues that under this standard, RAs are not employees within the meaning of the Act because their relationship is primarily educational. In this sense, the Employer argues that the

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Center, 261 NLRB 569, 572 fn. 17 (1982) (party seeking to exclude alleged managers must "come forward with the evidence necessary to establish such exclusion"); *BKN, Inc.*, 333 NLRB 143, 144 (2001) (independent contractors); *AgriGeneral, L.P.*, 325 NLRB 972 (1998) (agricultural employees).

RAs' responsibilities are so enmeshed with their role as students as to defy separation, because they are students first and interact with fellow students on a peer-to-peer basis.

1. RAs Perform Services for the Employer For Which They Receive Compensation.

Regarding the Employer's first argument, I do not find controlling whether the RAs perform job functions similar to other employees. Rather, the Board's *Columbia University* decision shows that the critical inquiry is limited to whether the RAs meet the three-part common law definition of employee, irrespective of whether other individuals are also employees, or also perform the same job duties.

The evidence establishes that RAs perform valuable services on behalf of, and at the direction of, the Employer. As described by several of the witnesses, residential life is an integral component of the student experience at the Employer, so much so that students are required to live on campus for the significant portion of their undergraduate careers. The RA is often a student-resident's primary point of contact for getting acclimated to campus life, gaining access to campus resources, and developing relationships with other students through campus activities and programs. RAs also fulfill the important role of often being the first to connect with students experiencing emergencies or personal crises, and to connect them with on- or off-campus support services or emergency response personnel. As a result of these job functions, and their simultaneous status as undergraduate students, RAs are able to develop relationships with student-residents unlike any other employees of the Employer.

Accordingly, the sum of the evidence shows — and the parties do not seem to dispute — that the Employer views living on-campus is an important part of a student's educational experience, and RAs are an integral and necessary component of fulfilling this Employer objective. Annually, the Employer expends significant effort to recruit, interview, hire, and train approximately 100 RAs as part of implementing its residential life experience for its students. The hearing testimony establishes that the Employer undertakes all of this effort because the Employer considers that RAs are uniquely able to perform the services the Employer has concluded are necessary to meet its educational objectives.

In exchange for the RAs' services — and for the corresponding benefits that the Employer considers that it receives from these services — RAs are compensated with a $2,500 stipend and housing valued at more than $12,000. It is self-evident from the record that the RAs' providing the services desired by the Employer is conditioned on the RAs' receiving their stipends and housing. I am not persuaded by the Employer's argument that the RAs are "undergraduate students who reside in the University's resident halls in order to have an informal, peer-to-peer mentoring relationship with, and serve as role models for, their fellow

undergraduate students." The Employer's characterization of the RAs' duties tellingly omits any explanation about *why* these duties are performed by RAs, and *why* undergraduate students serve as RAs.

Plainly, the RAs are not providing these services voluntarily – the RAs unquestionably receive something of value in exchange for their services. Further, since there is no suggestion that RAs receive academic credit in exchange for serving as RAs, I find no basis to conclude they provide these services as part of their educational relationship with the Employer. Rather, I find that the RAs provide these services based on an economic relationship with the Employer — the RAs exchange services desired by the Employer in return for compensation from the Employer and desired by the RAs.

I do not doubt that when current and former RAs reflect on the time they spent as RAs, they believe the experience was educational and was instrumental in their future career accomplishments. However, the same can be said for many of one's life experiences, whether they are educational, social, religious, or occupational. Employment experiences can simultaneously be educational or part of one's personal development, yet they nonetheless retain an indispensable economic core. Here, the evidence shows, and no party contends otherwise, that an economic exchange between the RAs and the Employer is the *sine qua non* of their relationship.

2. RAs are Subject to the Employer's Control in the Performance of Their Duties

The Employer next argues that RAs are not "employees" because the RAs exercise discretion in deciding how they will establish mentoring relationships with other students, what activities RAs will engage in with their residents, and when they will engage in these activities. While the evidence supports the Employer's claim that RAs have some discretion in how they perform their duties, I find that the RAs are nonetheless subject to the Employer's control.

First, the Employer requires RAs to enter into the Resident Advisor Employment Agreement, which outlines the expectations and employment terms for the position. By signing this contract, RAs agree that they will adhere to the Employer's policies and fulfill of the duties as outlined therein and as conveyed during in their required training sessions. The employment agreement includes detailed descriptions of how the RAs are expected to allocate their 20 weekly work hours to fulfilling their assigned duties. Through the employment agreement, the Employer controls where RAs sleep, when they may have overnight guests in their rooms, and who they may maintain an intimate relationship with.

RAs are expected to be actively engaging and making themselves available to the entire cohort of student residents assigned to them. While it is true that RAs have some freedom in deciding which strategies they will use for developing relationships with their student-residents,

and specific times when they will perform some of their duties, the programs designed by the RAs are subject to supervisory oversight by the residence director. Outside the social aspects of connecting with the student-residents, RAs have little discretion in deciding how they complete the administrative, training, or emergency response duties that are associated with the position.

In addition to the requirements of the RA employment agreement, the Employer controls how RAs interact with and respond to student-residents who may be experiencing emergencies or crisis situations. RAs must agree to comply, as a condition of employment, with the Employer's policies concerning confidential information learned in the course of their RA duties. RAs are required to only share confidential information about students within their supervisory chain-of-command, and only on a need-to-know basis.

All students, including RAs, are required to abide by the Employer's Code of Student Conduct. However, RAs are the only undergraduate students who are required to enforce the code of conduct, and report violations to the Employer. Similarly, there is no evidence in the record suggesting that the Employer exerts the same level of control over its non-RA undergraduate students, such as imposing restrictions about sleeping in their assigned residence halls, requiring them to respond to sensitive scenarios such involving mental health issues or claims of sexual assault, or for ensuring compliance with FERPA.

Furthermore, the evidence shows that the Employer exercises control over the RAs because it regularly monitors their job performance and retains the authority to terminate their employment if that performance is unsatisfactory. In this regard, the Employer requires RAs to complete weekly reports called "reflections" in which RAs provide, among other things, a summary of the work they performed that week, any concerns they may have, and self-evaluate their work for that week. These reports are used as part of regular meetings between the RAs and their supervising residence director. RAs are subject to discipline if they fail to abide by the employment agreement or confidentiality policy, ranging from oral warnings up to termination, or removal from consideration for a position the following year.

For the foregoing reasons and under current Board law, I find that the Employer's resident advisors are "employees" within the meaning of the Act.[9]

[9] I am cognizant and sensitive to the fact that current Acting Chairman Miscimarra dissented from the Board's decision in *Columbia University*. However, I am obligated to apply current Board law in my analysis. In his dissent, then-Member Miscimarra expressed his agreement with the Board majority's reasoning and holding in *Brown University*. Yet even if I were to apply the rule of the since-overturned *Brown University* that the Board will not assert jurisdiction over relationships that are primarily educational in nature, I would reach the same conclusion here. Based on the record evidence as described above, I conclude that the record is insufficient to establish that the RAs have a primarily educational relationship with the Employer in their capacity as RAs. While the applicant pool of RAs is limited to undergraduate students of the

C. There is No Compelling Policy Consideration that Requires Excluding RAs from Coverage Under the Act.

The Employer argues that even if RAs are statutory employees within the meaning of the Act, there are compelling policy reasons why the Board should not assert jurisdiction in this matter. The Employer claims that the Board's assertion of jurisdiction here will have profound effects on the inherently educational nature of the relationship between the RAs and the Employer, and the deeply personal nature of the relationship between RAs and their fellow students. Further, the Employer alleges that certifying a union as the collective-bargaining representative of the RAs would create constant conflicts between the Employer's obligation to provide relevant information to the Petitioner and the Employer's obligation to protect the privacy of student records under FERPA. Specifically, the Employer has concluded its FERPA obligations will be implicated for both the RAs in their capacity as students, and for the other students who interact with the RAs. Finally, the Employer suggests that collective bargaining would not promote stability in labor relations, citing the Board's decision in *Northwestern University*, 362 NLRB No. 167 (August 17, 2015) (declining jurisdiction over scholarship football players of a single university because doing so would not promote stability in labor relations).

In *Columbia University*, 364 NLRB No. 90, slip op. at 10-12, the Board addressed concerns about conflicts that may arise in an academic environment when student-employees have the right to engage in collective bargaining. The Board concluded that such potential conflicts should be left to the parties to resolve through the bargaining process. Additionally, rather than try to resolve hypothetical disputes that may arise during bargaining, the Board decided that it will leave any conflicts not resolved through bargaining to future adjudication, where the Board can refine the nation's labor policies with the benefit of a fully-developed factual record.

As for any potential conflicts between the parties' obligations under the Act, and other federal statutes such as FERPA, the Board held that it would not resolve such a potential conflict to hold that the Act does not apply at all, short of a conflict between two federal statutes that is truly irreconcilable. Regarding FERPA in particular, and conflicts that may arise with the duty to furnish information under the Act, the Board determined that "[a]ny such conflict can and should be addressed in the particular factual setting in which it arises[]" adding:

Employer, I find the record evidence to be insufficient to establish that serving as an RA is an integral aspect to the education of the undergraduate students who apply and who are selected to serve the Employer as RAs. Thus, I find the facts of this case to be distinguishable from the facts in *Brown University*.

> Suffice it to say that the Act recognizes that a union's right to information may, in a particular context, be subordinated to a legitimate confidentiality interest. See, e.g., *Olean General Hospital*, 363 NLRB No. 62, slip op. at 7-8 (2015) (considering state laws protecting patient confidentiality). *Columbia University*, 364 NLRB No. 90, slip op. at 13, n.93.

Further, the Board observed that many of the concerns raised about the problems with extending collective-bargaining rights to student-employees appeared to be generic complaints about the statutory requirements inherent in a collective-bargaining relationship, rather than education-specific concerns. *Id.* at 11. In this regard, the Board observed that for many decades, employees in higher education, healthcare, national security and defense, have had the right to bargain collectively, and experience has not shown there have been adverse impacts on these industries. *Id.*

Additionally, I find that the Board's reasons for declining to assert jurisdiction over scholarship football players in *Northwestern University* are not applicable in this case. There, the Board found that under the particular circumstances of that case, asserting jurisdiction would not promote stability in labor relations. That decision was primarily guided by the fact that the petitioned-for bargaining unit involved a single institution's football team. The Board observed that individual teams operated under the control of various governing bodies (the NCAA and athletic conferences), and, within the Football Bowl Subdivision system, the overwhelming majority of Northwestern's competitors were public colleges and universities over which the Board cannot assert jurisdiction. Here, the determinative facts of *Northwestern University* are not present. The RAs' terms and conditions of employment are not governed by any collegiate body other than the Employer, and the RAs' duties do not require them to interact with RAs from other educational institutions.

For the foregoing reasons, I find that there are no compelling policy considerations that would require excluding the Employer's resident advisors from coverage under the Act.

III. CONCLUSIONS & FINDINGS

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

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

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

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The Petitioner claims to represent certain employees of the Employer, and the Employer declines to recognize the Petitioner as the employees' representative.

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

5. The resident advisors employed by the Employer are employees within the meaning of Section 2(3) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All resident advisors employed by the Employer, excluding all other employees including managers, supervisors, and guards as defined in the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 500 a/w Service Employees International Union, CTW, CLC.

A. Election Details

The date, time, and place of the election will be specified in a Notice of Election that will issue shortly after this Decision.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

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

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Tuesday, April 25, 2017**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-April-14-2015.

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

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election that will issue shortly following this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In

addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

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

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: April 21, 2017

(SEAL)

/s/ Sean R. Marshall

Sean R. Marshall, Acting Regional Director[10]
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[10] Regional Director Charles L. Posner is recused from this case.