

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 01**

YALE UNIVERSITY  Employer  and  UNITE HERE LOCAL 33  Petitioner	Cases    01-RC-183014 01-RC-183016 01-RC-183022 01-RC-183025 01-RC-183031 01-RC-183038 01-RC-183039 01-RC-183043 01-RC-183050
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**DECISION AND DIRECTION OF ELECTION<sup>1</sup>**

UNITE HERE Local 33 (the Union) has filed nine petitions, each of which seeks to represent separate bargaining units composed of all teaching fellows, discussion section leaders, part-time acting instructors (PTAIs), associates in teaching, lab leaders, grader/tutors, graders without contact, and teaching assistants (referred to collectively as teaching fellows) who teach in each of nine departments at Yale University (Yale or the University). The nine separate units would include teaching fellows in the following departments: English, East Asian Languages and Literature, History, History of Art, Political Science, Sociology, Physics, Geology and Geophysics, and Mathematics.<sup>2</sup>

Yale contends that its teaching fellows are not statutory employees. In this regard, it asserts that *Columbia University*, 364 NLRB No. 90 (2016), in which the Board

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<sup>1</sup> The petition in this case was filed under Section 9(c) of the Act. The parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held before Jennifer Dease, a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

<sup>2</sup> Because of the similarity of the issues presented in these cases, the nine petitions were consolidated for hearing. The Union filed a tenth petition in Case 01-RC-183036, seeking the same unit in Yale's Comparative Literature Department, but that petition was withdrawn during the course of the hearing.

recently held that student assistants are statutory employees, was wrongly decided. It further contends that, in any event, the facts of this case distinguish Yale's teaching fellows from the student assistants at issue in *Columbia University*. I permitted Yale to litigate the latter issue pursuant to a limited offer of proof.

Should I find its teaching fellows to be statutory employees, Yale contends that the smallest appropriate unit must include all teaching fellows, university-wide.<sup>3</sup>

Finally, Yale asserts that teaching assistants and graders without contact should be excluded from any unit found appropriate, on the ground that they lack a community of interest with the other teaching fellows.<sup>4</sup>

I find that the Yale has failed to demonstrate that its teaching fellows are sufficiently distinct from the student assistants found to be statutory employees in *Columbia University* to warrant a different result. I further find that the nine petitioned-for units are appropriate pursuant to the Board's analysis in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), and I shall direct separate elections in those nine units.

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<sup>3</sup> As of the fall 2016 semester, the petitioned-for units included approximately the following numbers of teaching fellows: 26 in English, 29 in East Asian Languages and Literature, 66 in History, 22 in History of Art, 64 in Political Science, 18 in Sociology, 61 in Physics, 21 in Geology and Geophysics, and 20 in Mathematics.

The university-wide unit proposed by Yale would include over 800 teaching fellows.

<sup>4</sup> The Union defines "teaching assistants" as graduate teachers who are students at Yale's professional schools or who are in terminal masters programs at Yale, as opposed to graduate teachers who are Ph.D. students. Yale asserts that there is no separate classification called "teaching assistants," and that when professional and terminal masters degree students teach, they are appointed to the same categories as other graduate teachers, i.e., discussion section leader, lab leader, etc. Regardless of the accuracy of the title sought by the Union, Yale contends that professional school and terminal masters students should be excluded from any unit found appropriate for lack of community of interest with the other teaching fellows.

Based on the small number of graders without contact and teaching assistants/professional school and terminal masters students, I determined at the outset of the hearing to defer any ruling on their inclusion to the challenge procedure.

## **FACTS**<sup>5</sup>

### Yale's organizational structure

Yale is a nonprofit postsecondary educational institution located in New Haven, Connecticut. It operates Yale College, which has about 6000 undergraduates, and the Graduate School of Arts and Sciences (the Graduate School or GSAS), which offers various graduate degree programs to about 2850 graduate students. Yale also operates several professional schools, including a School of Engineering and Applied Science, School of Law, School of Management, School of Architecture, School of Medicine, School of Public Health, School of Nursing, School of Forestry and Environmental Studies, School of Music, School of Drama, and School of Divinity.

Yale's parent entity is the Yale Corporation, and its president, Peter Salovey, is responsible for oversight of the entire university. Yale's Provost, Benjamin Polak, is Yale's chief academic officer.

The vast majority of teaching fellows who are the subject of these petitions are graduate students in the Graduate School. Dean Lynn Cooley heads the Graduate School, which oversees graduate education programs and students. Dean Jonathan Holloway oversees the undergraduate education program at Yale College. Finally, the faculty members who teach the graduate and undergraduate students at Yale College belong to the Faculty of Arts and Sciences (FAS), which is overseen by Dean Tamar Gendler.<sup>6</sup> These three deans, as well as the deans of the various professional schools, report to the Provost.

FAS and the Graduate School are divided into three broad divisions: humanities, social sciences, and biological and physical sciences, also referred to as natural sciences. FAS has divisional deans for the Humanities and Social Sciences. The Graduate School has associate deans whose roles are defined by functional rather than divisional lines.

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<sup>5</sup> On October 27, 2016, the Union submitted a Motion to Strike Appendices A, C, D, and E of Yale's post-hearing brief, on the ground that they are unauthorized hearsay and not subject to judicial notice. I note that none of those appendices were part of the record in this case, and I have not relied on any of them in making my determination.

<sup>6</sup> Yale has about 1000 faculty members. The vast majority of FAS faculty have appointments both to Yale College and to the Graduate School and teach both graduate and undergraduate students.

## Yale's academic departments

Yale currently has approximately 50 academic departments and programs,<sup>7</sup> including the nine at issue in this case, most of which offer both an undergraduate and graduate curriculum. Although the organizational chart submitted into evidence by Yale does not include academic departments, the Yale Corporation's bylaws provide that members of the teaching and research staff who are teaching closely related subjects may be designated as departments. Yale's Faculty Handbook states that FAS is organized into departments as well as interdisciplinary units, programs and centers. Dean Gendler described an academic department as a group of faculty with common academic interests who have been so designated by the Corporation and who have limited responsibility for thinking about issues like curriculum, faculty hiring, and areas of research in which they jointly engage. She also testified that "the boundaries across departments are arbitrary ways of dividing up a multidimensional intellectual space."

Each academic department has a department chair, who is appointed by the President upon recommendation of Dean Gendler and reports to Dean Gendler.<sup>8</sup> The faculty in each academic department report directly to Dean Gendler and not to the chairs of their respective departments.

Many but not all departments also have a director of graduate studies (DGS), who is appointed by and reports to Dean Cooley at the Graduate School.<sup>9</sup> The DGSs function as advisors to all graduate students in the department, helping them to plan an appropriate course of study.<sup>10</sup> Many but not all departments have a director of undergraduate studies (DUS), who is appointed by and reports to Dean Holloway at Yale College.<sup>11</sup> The role of the DUSs is to act as advisors for undergraduates and to make sure they take all the courses needed to graduate. All nine of the academic departments at issue in this case have a chair, a DGS, and a DUS. Many academic departments also have a graduate registrar and/or an undergraduate registrar. Some

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<sup>7</sup> Yale's Faculty Handbook lists 44 departments and programs in FAS. Dean Cooley testified that there are 56 academic departments that offer Ph.D. programs. Dean Gendler testified that there are at least 42 academic departments in FAS and an upper bound for academic departments and programs in the 70s, depending how they are counted.

<sup>8</sup> History Department Chair Naomi Lamoreaux testified that she reports to Divisional Dean of Humanities Amy Hungerford and, through her, to Dean Gendler.

<sup>9</sup> The department chairs nominate DGS candidates to Dean Cooley, who has never rejected a nomination.

<sup>10</sup> In addition to a DGS who supervises graduate student progress toward a degree, the History Department has an Associate DGS who is in charge of its teaching fellow program.

<sup>11</sup> The department chairs, DGSs and DUSs are tenured faculty members who typically serve in these roles for one or two three-year terms.

have an operations manager, business manager, and various other administrators and support staff.<sup>12</sup>

Faculty at Yale may have a primary, joint, or secondary appointment to an academic department. Those faculty with a primary appointment are full members of that department's faculty and have voting privileges in the department. Some faculty have joint appointments to more than one department, with voting privileges in two or three departments. Some faculty have a primary appointment in one department and a secondary appointments to another department. Having a secondary appointment means that they are invited to be part of the faculty for purposes other than voting, such as advising a graduate student. Of 808 tenured or tenure-track faculty in FAS in 2015, 381 had joint or secondary appointments in another department.<sup>13</sup>

In addition to academic departments, Yale also has "programs," i.e., groups of faculty who may be from more than one department who come together to offer a degree program. For example, Yale offers an interdepartmental neuroscience program that is composed of faculty from the School of Medicine and from one of the science departments at Yale's main campus who are interested in neuroscience. Because programs involve more than one department, they have no chairs. Some programs offer only an undergraduate degree, while others offer only a graduate degree.

Twenty of Yale's departments offer combined graduate degrees that cut across departmental lines, such as a degree in African American Studies and Sociology or a degree in History and Film Studies. Some academic departments also offer joint degrees with one of Yale's professional schools, i.e., the School of Law, School of Medicine, and School of Management. Some of the courses taught by its faculty members and teaching fellows are "cross-listed," meaning that they satisfy an undergraduate or graduate requirement for more than one department.<sup>14</sup>

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<sup>12</sup> For example, the History Department has seven staff members who are supervised by an Operations Manager. This group reports to Yale's Human Resources Department rather than to anyone in the History Department. The Physics Department has a Business Manager who oversees employees responsible for purchasing and travel for the Physics Department. That group reports to an entity on the business side of Yale rather than to the Physics Department.

<sup>13</sup> Among the nine academic departments at issue, the percentage of faculty with primary appointments who have appointments to other departments ranges from 21 percent in Political Science to 56 percent in English. The percentage of faculty from outside the nine departments who have secondary appointments to the department ranges from zero percent in the East Asian Languages and Literature and English Departments to 44 percent in the Physics Department.

<sup>14</sup> Of 131 courses taught by teaching fellows in the nine petitioned-for departments in the fall 2016 semester, 22 courses, or 17 percent, were cross-listed in more than one department.

Yale has a student government/advocacy group for graduate students called the Yale Graduate School Assembly that is composed of elected student representatives from each academic department.

### Autonomy of the academic departments

The Graduate School establishes general admission requirements to Yale and determines the maximum number of graduate students who may be admitted to each department. During the application process, some applicants interview with faculty members and/or contact graduate students in the academic department to which they are applying. In each academic department, an admissions committee that is generally composed of faculty and the DGS<sup>15</sup> reviews the applications and makes admission recommendations to an Associate Dean at the Graduate School, which has final authority to approve the list. The Graduate School has vetoed applicants recommended by academic departments, but Dean Cooley testified that the Graduate School follows the recommendations of the DGSs the majority of the time.<sup>16</sup>

The Graduate School's extensive Programs and Policies handbook, referred to as the "P&P," applies to all graduate students and covers matters such as degree requirements, student progress, grades, leaves of absence, and personal conduct. Many academic departments have their own departmental handbooks and websites, but departmental policies may not supersede the policies set forth in the P&P. The Graduate School rather than the academic departments approves all requests by graduate students for a leave of absence, handles any disciplinary issues that arise, and approves any requests by graduate students to extend the completion of their studies into a seventh year.<sup>17</sup>

The Graduate School prescribes all general degree requirements. Thus, the Graduate School prescribes that graduate students in all departments must complete their Ph.D. program in six years, meet a three-year residency requirement, receive an honors grade in at least two courses, pass a qualifying exam, submit a prospectus for their planned dissertation, convene a thesis advisory committee, and submit their completed dissertation to the Graduate School. Academic departments determine the specific degree requirements for students in their departments. Thus, the Graduate

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<sup>15</sup> In the Physics Department, a Director of Graduate Admissions, who is different from the DGS, handles the admissions process for the department.

<sup>16</sup> Admitted candidates are sent an admissions letter that sets forth their financial aid package and teaching expectations. Until 2016, admissions letters were signed by both the DGS for the department and an associate dean from the Graduate School. As of 2016, all admissions letters are signed only by Graduate School Dean Cooley, who testified that the academic departments do not sign them, although admitted students may also be notified of their admission by a phone call from the department's DGS.

<sup>17</sup> Requests to extend Ph.D. studies into a seventh year must be endorsed by the academic department's DGS.

School requires all Ph.D. candidates to pass a qualifying exam, but each department designs its own qualifying exam. The Graduate School sets general parameters for the composition of a Ph.D. student's thesis committee, but the departments determine which specific individuals will serve on a thesis committee. The Graduate School requires two grades of "Honor" to receive a Ph.D., while the Physics Department imposes an additional requirement that the average of all grades is a "high pass." Degrees are conferred by the Graduate School rather than by academic departments, upon approval of the Yale Corporation.

Faculty in the academic departments oversee the departmental curriculum. They propose courses and make recommendations regarding courses of study to central committees for both undergraduate and graduate programs. They may propose new majors, which must be approved by a Yale College Committee on Majors. They may propose new degree programs, which must be approved by Dean Cooley, an executive committee at the Graduate School, the full Graduate School faculty, and the Yale Corporation Board of Trustees.

Faculty in the academic departments propose faculty to be hired, promoted, or granted tenure within their respective departments, which recommendations must be approved by a series of committees, a Divisional Dean, the Dean of FAS, and, ultimately, the President and the Yale Corporation.<sup>18</sup> Dean Gendler must approve any searches for faculty members, and one of her deans must approve the composition of the search committees. Control of faculty salaries rests with FAS, which approves faculty salary and benefits packages. Thus, Dean Gendler oversees the FAS budget of about \$750 million, while academic departments have a budget of \$10,000 to \$100,000 to be used for office supplies, lectures, conferences, social events, and the like. The Graduate School provides approximately 93 percent of the funding for the teaching fellows in the petitioned-for departments, with about 3 percent provided by the academic departments and about 5 percent from other sources.<sup>19</sup>

Faculty in all academic departments are subject to rules in the Faculty Handbook. Thus, in August 2016, Deans Cooley, Gendler, and Holloway sent an e-mail to all instructors in Yale College, reminding them that they are to post syllabi at least a week before the start of the term, that they are expected to be on campus most days of the week and make themselves available to advise students, that they must remain on

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<sup>18</sup> Dean Gendler is the sole chair of three of the four tenure and appointments committees, and she chairs the fourth one every other year.

<sup>19</sup> See Employer Exhibit 40. Various charts that Yale and the Union provided were submitted into evidence before the Union withdrew its petition for the Comparative Literature Department and therefore include totals from all ten of the original petitioned-for departments. For ease of reference, I shall use the totals on the charts as submitted into evidence, without subtracting out the numbers for the Comparative Literature Department, which employs relatively few teaching fellows.

campus during reading and examination periods, and that they should balance discussion sections sensibly across the whole week and day.

Academic departments do not have their own information technology, payroll or accounting function. Yale-wide software is used to appoint and pay teaching fellows. Students use a university-wide online course registration system and another university-wide online system to download the syllabus and readings for each course.

### Teaching expectation

The teaching fellows at issue in this matter are generally Ph.D. students within the Graduate School. All Ph.D. candidates are expected to teach as a condition of funding, and many departments require teaching as a condition of obtaining a degree.<sup>20</sup> According to the P&P section entitled "Training in Teaching," "[l]earning to teach and to evaluate student work is fundamental to the education of graduate students."

In general, Ph.D. students spend five to seven years of study within their discipline.<sup>21</sup> The standard pattern in the Humanities and Social Sciences is that Ph.D. students devote the first two years of their studies to taking courses. In the third and fourth years of their studies, they pass a qualifying exam, conduct research related to their doctoral thesis, and teach.<sup>22</sup> The fifth year, called a dissertation year, is devoted to their research, with no teaching expected. In the sciences, where Ph.D. students tend to do less course work and start their research earlier, Ph.D. students may teach in Years 1, 2, or 3 of their studies.

A number of American universities, including Columbia University, have a core curriculum, i.e., a set of common courses required of all undergraduates. The Graduate School's Senior Associate Dean, Pamela Schirmeister (referred to hereafter as Dean Schirmeister), testified that universities with a core curriculum need many graduate teachers to staff the courses in the core curriculum, as those courses are required of all undergraduates. She testified that, at Yale, which has no core curriculum for its undergraduates,<sup>23</sup> teaching fellows have a wider range of opportunities to teach an

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<sup>20</sup> Among the petitioned-for departments, teaching is a degree requirement in the English, Mathematics, History of Art, and Geology and Geophysics Departments. In the History, East Asian Languages and Literature, Political Science, Sociology, and Physics Departments, teaching is not a degree requirement but it is expected as a condition of receiving a stipend from Yale.

<sup>21</sup> Yale tries to discourage Ph.D. students from staying on for a seventh year.

<sup>22</sup> The one exception in the Humanities is that Ph.D. students in the History of Art Department are expected to teach in years 2 and 3 rather than in years 3 and 4.

<sup>23</sup> Yale does have distributional requirements, which require undergraduates to take at least two course credits each in the humanities and arts, the sciences, and the social sciences, quantitative reasoning, and writing. They must also take courses to improve their foreign language proficiency. Unlike a core curriculum which requires undergraduates to take specific

array of courses that are more suited to prepare them for the job market when they graduate.

### Financial aid and payment for teaching

Financial support for all graduate students at Yale, regardless of academic department, is administered by the Director of Financial Aid for the Graduate School, Jennifer Brinley, who reports to Dean Cooley. Every Ph.D. student at Yale receives a financial aid package that includes free tuition, an annual stipend to live on, and health care coverage. The Graduate School determines the amount of the financial aid packages, including the amount of the annual stipend, which is currently \$29,650 for all graduate students in the humanities and social sciences, and \$33,150 for all graduate students in the biological and physical sciences.

Ph.D. students in the humanities and social sciences are funded almost entirely by the Graduate School. Until recently, Yale guaranteed funding to Ph.D. students in the humanities and social sciences for only five years. In March 2016, Dean Cooley announced that nine months of funding for sixth-year students, with guaranteed teaching assignments, will be available to those Ph.D. students whose departments indicate that they are likely to complete their dissertations by the end of Year 6.<sup>24</sup>

Ph.D. students in the biological and physical sciences generally receive funding from the Graduate School only in the early years of their studies. After that, they are usually funded by external research grants obtained by their research advisors, NIH training program funds, or external fellowships won by the students. There is some variation among the science departments in this regard.<sup>25</sup> Thus, in the Geology and Geophysics Department, faculty funding is not as readily available for Ph.D. students as it is in the other sciences. If they have no support from external sources, Geology and Geophysics Ph.D. students who have completed their two-term academic teaching requirement may serve as teaching fellows for up to two more semesters in order to receive their full stipend. If a faculty member supporting a Ph.D. student in the sciences loses an external grant and there is no other funding available, Yale will provide financial support for those students until they finish their degree.

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courses, undergraduates at Yale may fulfill the distributional requirements with courses of their choosing.

<sup>24</sup> Sixth year humanities and social science students may alternatively receive nine months of funding for engaging in professional development activities, such as working at a museum. This new initiative to provide a sixth year of funding was not needed in the sciences, as those students are already funded for the duration of their studies, principally by external grants.

<sup>25</sup> For example, Yale provides Ph.D. students in Physics a fellowship for their first two years, while Ph.D. students in the Biomedical Engineering Department receive a fellowship from Yale only for their first year. After that, the cost of the students' funding is covered by grants obtained by their research advisor or by their department.

Ph.D. students receive the full stipend amount throughout their time at Yale, regardless of whether they are in one of their teaching years. Further, if Yale is unable to provide a Ph.D. student an appropriate teaching assignment during one of his or her teaching years, the student nonetheless receives the standard stipend amount.<sup>26</sup>

In the sciences, students who have completed their required teaching may do extra teaching, referred to as “non-stipend” teaching, for which they are paid \$4000 or \$8000, depending on the time commitment involved in the assignment, in addition to their annual stipend of \$33,150. Non-stipend teaching occurs most frequently in the sciences. In the humanities and social sciences, extra teaching is only permitted in Year 7, when Ph.D. students are no longer eligible for a financial aid package. Seventh year students may try to support themselves by finding a teaching position, for which they are paid at the non-stipend rate of \$4000 or \$8000.<sup>27</sup>

### The Teaching Fellows Program

All teaching fellows at Yale are appointed to their positions exclusively through the Teaching Fellows Program (TFP), which is part of the Graduate School and is administered by Dean Schirmeister. Teaching fellows at Yale must be registered students in the Graduate School or at a Yale professional school. Teaching fellows are appointed for one semester at a time.

There are currently four categories of teaching fellows:<sup>28</sup> Discussion section leaders teach small sections of courses that are attached to a larger weekly lecture given by a faculty member. Lab leaders run labs that are attached to a larger course that is run or supervised by a faculty member. Grader/tutors do not run a discussion section or lab; they grade students’ work, hold office hours for students who need help, and run study groups.

The fourth category of teaching fellows, PTAs, each leads an independent section of a multi-section course that is not attached to a larger lecture course but has a faculty member who serves as a course director and provides central supervision for the course. PTAs are commonly used to teach language classes, as well as some math, English, and music courses. A subset of PTAs, referred to as “associates in teaching,”

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<sup>26</sup> Yale may withhold stipend support from Ph.D. students in their teaching years who elect to decline an available teaching assignment.

<sup>27</sup> When graduate students teach while still receiving the financial aid package, referred to as “stipend teaching,” Yale withholds state and federal income taxes from that portion of their stipend that is attributable to teaching, i.e., \$4000 or \$8000. Director of Financial Aid Brinley testified that the rest of the stipend is still reportable as income for tax purposes, from which taxes are not withheld.

<sup>28</sup> In 2015, the Teaching Fellowship Program revised the structure of teaching fellow assignments to reflect these four categories, effective as of the 2015-2016 academic year.

apply for a competitive fellowship in which they design and propose a new course that they teach independently or team teach with a faculty member.<sup>29</sup>

Teaching fellow assignments are further divided into two levels based on the amount of time required for the assignment. Teaching fellows with a TF10 assignment, typically in the sciences and engineering programs, are expected to work between six and ten hours per week. Teaching fellows with a TF20 assignment, typically in the humanities and social science programs, are expected to work between 11 and 20 hours per week.<sup>30</sup> A PTAI assignment is always at the TF20 level. A discussion leader or lab leader may be assigned at the TF10 or TF20 level. A grader/tutor is almost always assigned at the TF10 level.

Although there is some variation, the standard pattern in the humanities and social sciences is that Ph.D. students teach four TF20 courses during their third and fourth years. Ph.D. students in the sciences tend to do less teaching, and there is more variability from department to department. They are generally expected to teach for two semesters at the TF10 level, but their assignments may range from one TF10 to two TF20 assignments.<sup>31</sup>

Each semester, Yale appoints about 800 to 900 graduate students to teaching fellow positions. Assignment of teaching fellows begins with a process that Dean Schirmeister refers to as the allocation process. A few months in advance of the semester, Dean Schirmeister evaluates enrollment data from the past three years in courses in all departments, programs and majors that need teaching fellows.<sup>32</sup> Based on her analysis of the data, including the number of graduate students in each department, she allocates teaching “resources” to each department and program,<sup>33</sup> with each resource equivalent to a ten-hour block of time. For example, in an April 2016

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<sup>29</sup> Associates in teaching are appointed in the TFP system as PTAs; there is no separate category of appointment called “associates in teaching.”

<sup>30</sup> Graduate students who do non-stipend teaching are paid \$4000 for a TF10 assignment and \$8000 for a TF20 assignment.

<sup>31</sup> In any year of study, the maximum amount of teaching a doctoral student in years one through six may do in a given semester is two TF10 assignments or one TF20 assignment. Students doing non-stipend teaching may teach up to three TF20 assignments per year.

<sup>32</sup> Yale offers about 5000 undergraduate courses each semester.

<sup>33</sup> In addition to allocating teaching resources to departments and programs, Dean Schirmeister also allocates resources to undergraduate majors that are not attached to a department. For example, there is an interdepartmental undergraduate major called Ethnicity, Race, and Migration that draws on faculty and teaching fellows who have appointments in the Departments of History, American Studies, African American Studies, English, Music, Political Science, Sociology, and Anthropology.

In some cases, professional schools or programs housed in professional schools receive allocations.

“allocation memo,” Dean Schirmeister notified the History Department that it would have 157 resources, i.e., 157 10-hour blocks of time, to distribute among its courses for the both semesters of the 2016-2017 academic year. Sometimes academic departments disagree with Dean Schirmeister’s analysis, and some negotiation occurs over their allocation.

Each semester at Yale begins with a 10-day course selection period, referred to as the “shopping period,” during which undergraduates attend classes before making their final course selections. If there is an unexpected spike in enrollments after the end of the shopping period, resulting in a need for additional teaching resources, the departments and programs must negotiate with Dean Schirmeister and/or a Graduate Teaching Advisory Group over an increase to their allocation.<sup>34</sup>

Each department and program is then free to distribute the resources allocated to it as it sees fit. Thus, the departments and programs determine which courses will have a teaching fellow, what type of teaching fellow will be assigned to the course (discussion leader, lab leader, PTAI, or grader/tutor) and what level of teaching fellow will be assigned (TF10 or TF20). They are free to modify teaching assignments during the course selection period based on enrollments that are higher or lower than expected.

In the allocation memo sent by Dean Schirmeister to each department and program, and in a subsequent “What You Need To Know Now” e-mail from various deans to the departments and programs that appoint teaching fellows through the TFP, the academic departments are reminded of the TFP’s rules concerning the appointments they make.<sup>35</sup> Thus, in making teaching assignments, departments and programs are required to give priority to their own Ph.D. students who have required teaching to do for their degrees, and then to their Ph.D. students who are eligible for guaranteed sixth year teaching. After that, they must post any unfilled allocations on the TFP’s Teaching Opportunities website, considering first any qualified applicants who are in their teaching years. Teaching fellows may not be asked to teach for more than 20 hours per week.<sup>36</sup>

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<sup>34</sup> The Graduate Teaching Advisory Group is composed of Dean Cooley from the Graduate School and others from the FAS Dean’s office.

<sup>35</sup> The “What You Need To Know” e-mail is sent by Deans Cooley, Gendler, Holloway, and Schirmeister to the Chairs, DGSs, and DUSs of each department and program that employs teaching fellows.

<sup>36</sup> Five weeks into the term, the TFP sends a survey to teaching fellows, asking them if the level of their assignment is appropriate. In the case of teaching fellows who respond that they are being asked to work more than their assignment level allows, Schirmeister intercedes with the teaching fellow and faculty member. In some cases, she changes a TF10 assignment to a TF20 assignment.

Finally, the TFP mandates that students whose first language is not English must take an English course and pass an English proficiency test, referred to as the “speak test,” before they are appointed to a teaching fellow position.”<sup>37</sup>

The TFP caps the number of sections that each discussion leader teaches at two sections per course.<sup>38</sup> The TFP also dictates the maximum size of each section taught by each teaching fellow, which should not normally exceed 18 students. Departments must provide a rationale to the TFP for larger sections, and the TFP must also approve requests by academic departments to reduce section sizes.<sup>39</sup> The Graduate School requires that at least 36 students must be in a course to warrant the appointment of a teaching fellow, although academic departments may make exceptions on their own to this requirement, provided that such an exception does not result in the need for additional allocations.<sup>40</sup>

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<sup>37</sup> Most international students are required to do so in December of their first year at Yale. Due to a shortage of teaching fellows in the Physics Department, incoming international students in Physics take an English proficiency course in August of their first year, before the semester starts. Those Physics students who pass the “speak test” in August are assigned to teaching fellow positions during their first semester at Yale.

The one exception to the prohibition against appointing students who have not yet passed the English proficiency test is for native language instruction.

Graduate students who have not yet met Yale’s English proficiency requirements may be appointed only as “graders without contact.” Dean Schirmeister testified that Yale took the grader-without-contact position out of the Teaching Fellows Program last fall. As noted above, the inclusion of graders without contact in the unit has been deferred to the challenge procedure.

<sup>38</sup> Art history teaching fellows used to teach only one section of students per course, due to the extra time required to prepare physical slides for art history courses. Two years ago, Dean Cooley and Dean Schirmeister met with the Chair and DGS of the Art History Department, to notify them that, due to changes in technology that make it easier to compile art photos, its teaching fellows would have to teach two sections going forward, like the other humanities teaching fellows. The Art History Department was opposed to this plan and argued that, unlike other humanities students, its students teach in Year 2, while they are still completing their own course work, so they should have a lower workload than other humanities teaching fellows. Ultimately, Dean Cooley, who had the final say, agreed to permit Art History teaching fellows to teach one section in Year 2 and two sections in Year 3 of their studies.

<sup>39</sup> Thus, in August 2016, the History Department DGS approved the requests of three faculty members to reduce sections to 15 students for certain classes, based on specific criteria. The History Department registrar forwarded the request to the TFP, and Dean Schirmeister approved the override in the TFP system, based on the existence of consistent criteria. The Chair of the History Department testified that, although its DGS may permit a course to have a lower number of students per section, the Graduate School may subsequently punish the department with fewer allocations if its sections are too small.

<sup>40</sup> Thus, History Department Registrar Marcy Kaufman testified that her department’s faculty voted that courses with 20 or more students are eligible for a teaching fellow.

Once academic departments have determined which courses will be allocated a teaching fellow, they are primarily responsible for selecting the particular graduate students who will be appointed to each position, referred to as the “matchmaking” process.<sup>41</sup> In some departments the DGS or DUS is responsible for making the teaching fellow assignments, sometimes with the assistance of the department’s registrar, who may play a big role in the process. In others, a committee that may include graduate students, faculty, registrars or staff makes the assignments.<sup>42</sup>

In general, the faculty members explain their needs and the background or expertise required of a teaching fellow for their courses, and they may be asked to express their preference as to the individuals who will be assigned as teaching fellows for their courses. In some departments, the registrar sends a list of courses in need of teaching fellows to the graduate students in the department and asks them to rank their preferences. In making assignments, academic departments take into account faculty preference, and they must also follow the rules established by the Graduate School, e.g., by giving priority to students from their department who are in their teaching years. However, some departments may also take into account their own policies in making teaching fellow appointments. Thus, the History Department has a policy that teaching fellows must teach for their thesis advisor at least once, and the Department may override faculty requests for a particular teaching fellow if the requested student has taught the course before and there is another student who would benefit from teaching it.

Although the academic departments have primary responsibility for the matchmaking process, they seek assistance from Dean Schirmeister when necessary. DGSs, DUSs, and registrars often contact her if there are still open slots after they have exhausted all the eligible graduate students in their own department to inquire if another department has graduate students who would be qualified to teach courses in their department, or they may contact the registrars from other departments directly. Some departments that have too many teaching fellows due to unexpected decreases in undergraduate enrollment in their departments’ courses contact Dean Schirmeister for suggestions for placing those teaching fellows, based on their expertise. Some departments, such as Sociology, generally have inadequate teaching opportunities for their graduate students, and Dean Schirmeister reaches out to the Sociology DGS in advance to make suggestions about placements for the Sociology students.

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<sup>41</sup> Dean Schirmeister testified that the faculty members who teach each course know best what their needs are, and that she could not possibly match up to 900 teaching fellows to 900 courses.

<sup>42</sup> With respect to the petitioned-for departments, the DGS appoints teaching fellows in the East Asian Languages and Literature, History of Art, Physics, Geology and Geophysics, and Political Science Departments. The DUS appoints teaching fellows in the Math and Sociology Departments. A committee appoints teaching fellows in the English and History Departments.

After a published date, if no teaching fellow has been appointed to a course in need of one, the faculty member may list his or her course on the TFP's Teaching Opportunities website, and students may apply for the assignment directly through the website.

Once an academic department has selected a graduate student for a teaching fellow assignment, a department representative, such as the DGS or DUS, makes the assignment in TFPs computer software system, which generates an appointment letter.<sup>43</sup> The software will not permit an academic department to make an appointment for an ineligible student. Sometimes academic departments contact Dean Schirmeister to seek a waiver of TFP requirements. For example, the Physics Department recently asked Dean Schirmeister for permission to appoint three graduate students to teaching fellow positions who had not yet passed their English proficiency tests, and she denied the request. Academic departments must also request permission to vary from the typical pattern with respect to teaching years. Thus, the History Department and East Asian Languages and Literature departments have obtained permission from Dean Schirmeister to allow particular students to teach in Year 2, in certain circumstances, and the Political Science Department has sought permission from the Graduate School to permit students to teach in years other than Years 3 and 4.

### Supervision of teaching fellows

The parties have stipulated, and I find, that the teaching fellows' immediate supervisors are the faculty members who teach the courses to which they are assigned. For those courses that have multiple sections and multiple teaching fellows, those teaching fellows share common supervision by the same faculty member.

Faculty members sign the appointment letters for teaching fellows. Faculty members are expected to meet with their teaching fellows weekly to coordinate teaching activities. They help teaching fellows prepare for sections, and give them direction in grading examinations and papers. Faculty members are expected to observe at least one section taught by each teaching fellow assigned to their course and to offer feedback and suggestions. They may offer teaching fellows an opportunity to lecture and critique their performance. Neither faculty members nor academic departments prepare written evaluations of teaching fellows' performance.

Dean Schirmeister testified that academic departments have no individual who performs a human resources or labor relations function and that any grievances by teaching fellows would come to her. Political Science Chair Steven Wilkinson testified that teaching fellows who have complaints raise them primarily with their faculty member. If that is unsuccessful, they may take their complaints to the department's registrar for informal resolution. However, the department has no power over individual

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<sup>43</sup> The DGS is generally a "master approver" with authority to make assignments in the TFP software system.

faculty members, and larger disputes are handled by the Graduate School, which has a complaint committee.

It appears that some grievances or complaints by teaching fellows are brought first to the academic departments. Teaching fellows Emily Sessions and Judith Hoeller testified that if they had any complaints about their course, they would bring them to the instructor for the course, and if they had any complaints about the instructor, they would bring them to the DGS.

In one instance, Eastern Asian Languages and Literature teaching fellow Jeffrey Niedermaier complained to his advisor that he was working more than the 20 hours per week allowed for teaching fellows. His complaint was relayed to the department DGS, who intervened with the supervisor for the course to make sure his hours were not excessive. In another instance, teaching fellow Gabriel Winant and another teaching fellow in the History Department had an argument in which one insulted the other. The other teaching fellow complained to the course head and then to the Chair of the History Department, who called Winant to her office and advised him not to talk to the other teaching fellow except when necessary for work.

In early 2016, the Chair of the History of Art Department asked his teaching fellows to teach an extra section of a course, in accordance with the Department's new agreement with the Graduate School that third year art history teaching fellows would teach two sections rather than one section of a course, as they had done in the past. The Chair wrote that the teaching fellows might feel it was unfair and that the Department had done everything it could to avoid it, but that the agreement with the Graduate School was clear. In a column in the Yale Daily News, teaching fellow Emily Sessions protested what she asserted to be the Yale administration's unilateral doubling of her workload.

Any alleged breach of the Graduate School Code of Conduct in the P&P is heard by a Graduate School disciplinary committee. Cases involving sexual misconduct are heard by a university-wide committee. Academic departments do not have their own disciplinary committees and have no authority to terminate teaching fellows; they are to report any disciplinary issues to the Graduate School.<sup>44</sup>

Dean Schirmeister testified that fewer than a handful of teaching fellows have been terminated from their positions in the last 15 years, and she was always involved in the situation. In a recent case, a faculty member in the Music Department said that he no longer wanted a teaching fellow who had failed to show up or was very late for several meetings. The Department Chair called Dean Schirmeister to ask what the

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<sup>44</sup> Teaching fellow Gabriel Winant testified about an incident in which a student complained to a professor that, in grading his paper, Winant had made a comment that the student thought was excessively harsh. The professor urged Winant to apologize to the student, which he did. No disciplinary action was taken against Winant.

Department was allowed to do in that situation. Dean Schirmeister notified the student that he had been terminated from his teaching fellow position. She did not conduct an independent investigation before doing so, but relied on the information reported to her by the department chair.

### Duties, qualifications, skills, and training

The general duties of the various teaching fellow positions are the same university-wide. In all academic departments, discussion leaders teach sections that are attached to a larger lecture course, lab leaders run labs that are attached to a larger science course, and PTAs teach sections of classes that are not attached to a larger lecture course. Regardless of academic department, a standard TF20 assignment involves attending a weekly lecture by the faculty member teaching the course, leading two weekly discussion sections per week, meeting weekly with the professor, holding office hours for students, and grading exams and other assignments. All grader/tutors, regardless of academic department, grade students' work, hold office hours for students who need help, and run study groups. All of the positions, regardless of academic department, require the skill to present material clearly and to evaluate student work.

However, the content of the courses that teaching fellows teach varies widely, and teaching assignments require both a background in the subject matter and sets of skills that may vary by academic department and by course.<sup>45</sup> Thus, teaching fellow Jeffrey Niedermaier taught a Japanese language course and a course about a pre-modern Japanese novel for the East Asian Languages and Literature Department. He has advanced knowledge of modern Japanese and Kobuntai, a classical Japanese language. In teaching Japanese language, the teaching fellows use audio recordings of the students to correct their intonation. Teaching fellows in the English Department typically have skills in close reading of literary texts and how to make arguments based on those texts, knowledge of literature style, form, genre and literary history, and knowledge of literary theory and critical scholarship.

Teaching fellow Jifeng Sheng teaches calculus for the Mathematics Department, which he testified requires training in the analysis and theory of calculus. Judith Hoeller

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<sup>45</sup> In the fall of 2017, Yale plans to expand each incoming undergraduate class by 200, so that the undergraduate student body will be 15 percent larger in four years, but there is no plan to expand the size of the Graduate School in response to the undergraduate expansion. According to a March 2016 FAS Senate report on the expansion of Yale College, this will “accentuate some of the weaker aspects of allocation and training teaching fellows. Some Yale courses, especially large lecture courses, already utilize teaching fellows with limited expertise in the particular fields or methodologies being taught in the class. In addition, some graduate students find themselves assigned to courses with little relevance to their own scholarship and little utility as a credential on the job market. Finally, the existing TF system, when combined with Yale course selection (“shopping”) period, can sometimes produce a confusing and inefficient scramble at the beginning of the semester, with the result that departments may hire teaching fellows with little background or preparation in the course subject.”

was a teaching fellow for a Physics Department course called Life Sciences, which involves the application of physics to biology and medicine, and for another course in Quantum Mechanics. Both courses required teaching fellows that have an undergraduate background in physics. Some teaching fellows in the Geology and Geophysics Department lead field trips with faculty members in the area and around the world; teaching fellows in that department typically have field skills and knowledge of earth sciences.

Teaching fellow Emily Sessions testified that teaching art history courses requires a set of skills in art history methods, which may be gained through years of training in art history. Her background includes work in art galleries and art museums as well as a masters in art history. In teaching her courses, she also draws on knowledge of certain cultures from work on her dissertation. The classes Sessions taught as a teaching fellow involved taking students to Yale's art galleries to view art objects and teaching students how to use the visual information in an object to make an argument.<sup>46</sup> She had to prepare visual material, such as printed images of paintings, so that students could compare different works of art.

Teaching fellow Gabriel Winant, testified that he read about 30 to 35 books on African American History for his Ph.D. qualifying exam in history that prepared him to teach an African American history course. The course also required the skill to lead discussions about race with sensitivity and to teach students how to use primary sources.<sup>47</sup> A prior masters in American 20<sup>th</sup> century history and graduate work qualified him to be a teaching fellow in a course entitled American Politics and Society 1900-1945. Winant testified that he is not qualified to teach any course outside the History Department.

Teaching fellows in Political Science typically have knowledge of political theory, quantitative analysis tools that apply statistical or economic analysis to political science methodologies, relevant history or other content, and current academic debates. Teaching fellows in the Sociology Department typically understand sociological theory and qualitative and quantitative methods, including methods like ethnography and sociology-specific statistical analysis techniques and theories.

Yale offers some university-wide training for teaching fellows in all academic departments. Yale's Center for Teaching and Learning is dedicated to improving

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<sup>46</sup> Dean Schirmeister testified that departments in disciplines other than Art History also use objects to teach undergraduates, such as a Treasures of Yale course that takes students to Yale art galleries and to the Medical School to see a collection of scientific instruments. Schirmeister has taught a course in which she takes students to a Yale library to see a Lewis and Clark map.

<sup>47</sup> Schirmeister testified that other academic departments at Yale, such as the American Studies, African American Studies, and Classics Departments teach their students to how use archival/primary sources.

learning outcomes. First-time teaching fellows in all academic departments are required to attend a one-day event sponsored by the Center for Teaching and Learning called “Teaching at Yale Day,” which addresses policies and guidelines for teaching, teaching resources, and how to prepare to teach sections and labs. All new teaching fellows are also required to take an afternoon professional development seminar on academic integrity, prevention of sexual misconduct, and the inclusive classroom. The Center for Teaching and Learning also offers other optional workshops and teaching certificates for teaching fellows in all academic departments.

The Graduate School also encourages all programs to offer department-specific training in teaching, as each discipline requires specific content knowledge. Thus, the English Department requires its students to complete a teaching practicum before they become teaching fellows. Many language and literature departments offer training in teaching textual analysis and literary history or in teaching a foreign language. The Mathematics Department requires second year students to attend a series of “Lang Lunches” and other training sessions in which they are trained to teach calculus and linear algebra. The Departments of History, Political Science, History of Art, Physics and Psychology have offered discipline-specific workshops that are offered centrally by the Center for Teaching and Learning,<sup>48</sup> while other departments offer teacher training within their own departments.

### Wages, hours, and working conditions

As noted above, the amount of the stipend provided to graduate students is set by the Graduate School. Students in the sciences are paid about \$3000 more than students in the humanities and social sciences. All students in the sciences receive the same stipend, regardless of academic department, and all students in the humanities and social sciences receive the same stipend, regardless of academic department. All teaching fellows who perform non-stipend teaching are paid \$4000 for a TF10 assignment and \$8000 for a TF20 assignment, regardless of division or academic department. All teaching fellows work the same number of hours for a TF10 or TF20 assignment, regardless of academic department. Yale provides the same health insurance coverage to all graduate students, regardless of academic department.

The Physics Department uses funds from the Physics Department, the Provost, and faculty grants to provide a laptop to every entering Physics student. Academic departments have discretion to offer free printing and photocopying to their teaching fellows. The Mathematics, Physics, Political Science, and History Departments provide free printing and photocopying, although it appears in many cases that they do so for all graduate students, regardless of whether they are currently teaching fellows.

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<sup>48</sup> Graduate student Judith Hoeller testified that, in her semester of teaching, all first-year teaching fellows in the Physics Department were required to attend training in how to teach physics, which was taught by upper-level graduate students affiliated with the Center for Teaching and Learning.

Every year, Yale College, the Graduate School, and the Center for Teaching and Learning award four to ten “Prize” awards to teaching fellows, which includes some money and a dinner. The awardees are nominated by undergraduates, and teaching fellows from all academic departments are eligible for the award.

### Contact

Each academic department is located in a building on campus, although more than one academic department may share a building. Generally, the chair, DGS, DUS and sometimes the registrar of an academic department are located together. Other department faculty members may have offices in that same building or may be scattered among other buildings, due to lack of space. Classes are assigned to classrooms based on the size of the class and are not necessarily held in the building in which the academic department is located. The science departments and labs are generally located in a series of buildings referred to as Science Hill and at the Medical School campus. Academic departments may choose whether or not to provide workspace for their teaching fellows.

The Physics Department has space in four buildings on Science Hill, including administrative offices, research labs and labs for teaching. All first year Physics graduate students share the same office. After Year 1, they are assigned offices near their advisors that they share with other graduate students, who may or may not be teaching fellows at the time. The Sloane Physics building has a lounge for Physics teaching fellows, where some of them hold office hours for students. Judith Hoeller, a physics graduate student and teaching fellow, testified that the six to eight teaching fellows who taught the Physics courses she taught met weekly as a group with the professor. In some instances, the teaching fellows did their own grading and in other cases they graded exams together. They held office hours for students separately. The teaching fellows compared notes about teaching when they were at the Physics building and those teaching the same course exchanged e-mails about how to teach a difficult concept. She discussed one course with a teaching fellow who had taught it previously to go over the kinds of questions undergraduates ask during office hours.

The Mathematics Department has offices in two connected buildings, and its graduate students all share an office. Teaching fellow Jifeng Shen testified that the math instructors meet weekly with the teaching fellows as a group to discuss logistics, to give advice about how to teach the next class, and to craft the mid-term and final. The math teaching fellows share lesson plans and tips for teaching the courses. Shen talked to other graduate students when he once had a concern about possible plagiarism by students in his class. For one course, the teaching fellows rotate hosting cross-section review sessions for the undergraduate students. Shen grades alone but checks with the other teaching fellows for consistency in grading. Math graduate students socialize at tea time every afternoon and at various departmental parties, dinners, and lunchtime seminars.

In the Geology and Geophysics Department, many Ph.D. students have offices in one hallway of the Kline Geology Laboratory known as “the Grad Wing.” Many teaching fellows typically hold office hours for students in these offices. The Ph.D. students in the department also have a lounge room where they socialize. They conduct office hours there when they serve as teaching fellows. The teaching fellows may discuss teaching work and issues that arise in the course of teaching with one another.

In the Political Science Department, many of the faculty, staff, and graduate students are located in Rosenkranz Hall, but some faculty are in nearby buildings. The department has a few offices in Rosenkranz that teaching fellows are allowed to use for office hours, and some hold office hours in other locations. Teaching fellows in Political Science courses may meet and attend events together. They typically attend course lectures, walk together after course lectures, have weekly teaching fellow course meetings, and have grading meetings for the course.

The Sociology Department is primarily located in one building, but some graduate students have offices in two adjacent buildings. The teaching fellows and professor for a course typically meet all together about four to five times during the semester. During their first semester teaching in the Sociology Department, teaching fellows may meet with other teaching fellows separately from the meeting with the faculty supervisor for the course. They may e-mail each other about grading, compare notes for section meetings, and may collaborate on a document that they pass out to students about expectations for the course. Those teaching a course for the first time may receive advice from teaching fellows who have previously taught the same course. Teaching fellows in the Sociology Department may discuss the logistics of teaching assignments and what different courses are like. They may compare how much time teaching fellows in the Sociology Department spend working in different courses and may discuss different Sociology modalities and subject matters.

The English Department has its offices at Linsly-Chittenden Hall, although some English classes are held in other buildings. The English Department assigns office space to graduate students in their teaching years, and many PTAs in the English Department have offices near each other, including PTAs teaching different courses. Faculty members and PTAs teaching multi-section writing courses in the English Department have group meetings over the course of the semester. PTAs teaching in the English Department may discuss teaching strategies and issues.

The East Asian Languages and Literature Department has a primary location at the Hall of Graduate Studies, which houses several academic departments. A graduate student lounge dedicated to East Asian Languages and Literature Students is in the basement. A secondary location houses various language programs. Eastern Asian Languages and Literature teaching fellow Jeffrey Neidermaier testified that, although he teaches a Japanese language course by himself, the teaching fellows in the department work in the same building and in the same spaces in that building. Some East Asian Language and Literature courses are taught in the Sterling Memorial Library across the

street. Neidermaier was the only teaching fellow for a Japanese literature class that he taught. For that course, he worked alone with the instructor and did not collaborate with other teaching fellows, although he sought advice from other teaching fellows regarding the psychology of grading papers and the degree to which style or content should affect a grade. He also spoke to another teaching fellow in the vicinity about the best way to approach a case of plagiarism. Neidermaier has also been a teaching fellow for a Japanese language clinic. For that class, he sought advice several times from a fourth year student who taught elementary Japanese last year and he chatted in the break room with teaching fellows who were teaching other levels of Japanese, getting their advice about how to teach a difficult concept in an elementary Japanese course, how to teach a specific pitch, and how to use technology involved in the students' audio files. Neidermaier also speaks Chinese and speaks with the teaching fellows for those language courses about how they are handling teaching and balancing it with their own exams and research. The teaching fellows share a space that houses copying machines and teaching fellow mailboxes, which gives them a place to interact about their teaching responsibilities.

The History Department has its main offices in the Hall of Graduate Studies, which, as noted above, houses several academic departments. Some of its faculty offices are scattered throughout the Hall of Graduate Studies, while others are located in other buildings all over the Yale campus. History classes are taught in many buildings throughout the Yale campus. The History Department has a graduate lounge for all of its students, not just teaching fellows. The Department holds various parties for the entire department, including graduate students, to which its teaching fellows from other departments are not invited. The History Department does not provide office space to its teaching fellows, who hold office hours in coffee shops or in a café at the Hall of Graduate Studies.

Teaching fellow Gabriel Winant testified that he taught one course in the History Department for which he was the only teaching fellow and other history courses with multiple teaching fellows. In those courses with multiple teaching fellows, the teaching fellows met with the professor several times during the semester and practiced lectures in front of each other. In one course, the teaching fellows met with each other three to five times in addition. Teaching fellows often met for coffee to talk about course content and e-mailed each other as a group about the course. In one course, the teaching fellows collectively wrote a mid-term exam and developed a rubric for grading it. Winant also interacted with teaching fellows teaching other courses in the History Department, regarding shared strategies. They shared handouts that they had received from more senior graduate students in the History Department, and one teaching fellow in another History course shared course policy sheets with Winant several times. Winant testified that the people he knows best are graduate students in the History Department, but he also interacted with teaching fellows in his courses who were pursuing their degrees in other departments. He frequently e-mailed a law student who was one of four teaching fellows in one of his courses who had many questions about how to teach a history course. Winant and another teaching fellow also engaged extensively with a teaching

fellow/American Studies graduate student who was teaching a history course, as they had to get her up to speed about how to give a history lecture.

Noah Rosenblum is a law student at Yale who was a discussion section leader for a course in the History Department. Rosenblum testified that the teaching fellows met weekly with the instructor. In addition, the teaching fellows for the course met from half a dozen to a dozen times to discuss both the content of the course, how to teach it, and grading. He also attended from 6 to 12 History Department events, such as workshops, conference, and lectures, at which he had conversations with other teaching fellows in the History Department, apart from those from his course.

The Loria Center for the History of Art houses the History of Art Department, including faculty offices, classrooms, and rooms used by teaching fellows to hold office hours or meet to grade papers and discuss teaching. Some classes are held at the Yale Art Gallery across the street. Teaching fellow Emily Sessions taught two art history courses for which the teaching fellows attended course meetings with the professor. In both courses, the teaching fellows rotated preparing a lesson plan, which they distributed to the other teaching fellows. For one of the courses, the four teaching fellows held multiple “grading parties” in the teaching fellow rooms at Loria to make sure that they were grading consistently. They divided up the exams and graded the exams of students who were not necessarily in their own section. Some History of Art courses have only one teaching fellow and would not have grading parties. The teaching fellows for another course Sessions taught held an informal meeting to discuss how to assess a research paper written by undergraduates. Sessions held office hours for students by herself, and there were times that she graded exams on her own. Teaching fellows in the History of Art Department hang out together in a graduate student lounge at the Loria Center and attend holiday parties there.

New graduate students from all academic departments attend an orientation week provided by the Graduate School. Graduate School students and faculty from all academic departments are invited to attend a Graduate School holiday party, and teaching fellows from different departments may have contact with one another at Center for Teaching and Learning training events and programs.

### Interchange

Teaching fellows are appointed for only a semester at a time. There is limited evidence in the record of occasional temporary interchange between teaching fellows who are temporarily absent during the semester. Dean Schirmeister testified that if a teaching fellow falls ill in the middle of a semester, which is quite rare, the faculty member normally takes over the remainder of the section meetings, because it is difficult to bring in a new person mid-stream. Four teaching fellows in the Math, Physics, and History Departments testified that when teaching fellows are sick or otherwise unavailable for a section meeting, they generally ask another teaching fellow in the department who is teaching the same course or who has taught it before to

substitute for them, but this does not appear to happen frequently.<sup>49</sup> The teaching fellows in the Sociology Department may on occasion arrange to cover each other's sections. There is no evidence that teaching fellows ever substitute for teaching fellows in a different academic department.

As for permanent interchange, teaching fellow Noah Rosenblum testified that he has taught in the History Department and the Computer Science Department in different semesters. Two teaching fellows had concurrent appointments in two different departments last semester.<sup>50</sup>

It is common in some academic departments at Yale for graduate students to be appointed as teaching fellows in academic departments other than their "home" department, i.e., the academic department in which they are pursuing their degree.<sup>51</sup> In some cases, this is due to the fact that the home department offers no courses or not enough courses that are suitable for a teaching fellow assignment. Further, the Graduate School encourages graduate students to get teaching experience outside their home department to make them more marketable once they graduate.

According to various exhibits submitted into evidence by Yale, of the 310 teaching fellows appointed to teach in the original ten petitioned-for departments for the fall 2016 semester, 64 (21 percent) were appointed to teach in departments other than their home department.<sup>52</sup> Of the 287 graduate students working toward degrees in the

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<sup>49</sup> Physics Department teaching fellow Judith Hoeller testified that another teaching fellow who was teaching the same course substituted for her one time when she had an appointment and that she was asked to serve as a substitute for another course, but it never happened. Math Department teaching fellow Jifeng Shen testified that, in his department, the teaching fellows ask other teaching fellows who are teaching the same course or who have taught it before to substitute when needed, and he has done so. History Department teaching fellow Noah Rosenblum testified that he once asked another History Department teaching fellow to substitute for one of his sections, but the person had a conflict, so he found a post-doc to substitute for him. History Department teaching fellow Gabriel Winant testified that he once substituted for another teaching fellow teaching the same course, teaching both of his two sections for one week.

<sup>50</sup> Teaching fellow Jiaying Gu taught both in the East Asian Languages and Literature and History of Art Departments, while Toshihiko Shimasaki taught both in the East Asian Languages and Literature and Physics Departments.

<sup>51</sup> For example, the vast majority of the East Asian Languages and Literature Department teaching fellows are pursuing their degrees in other departments and were hired because they are native speakers.

<sup>52</sup> See Employer Exhibit 34. Of the 64 students who taught in departments other than their home department, 23 are Ph.D. students and 41 are professional school students and terminal masters students.

There is quite a bit of variation among the nine petitioned-for departments with respect to appointment of teaching fellows from other departments. Thus, 24 of the 29 teaching fellows appointed by the Eastern Languages and Literature Department were "homed" in other

ten original petitioned-for departments, 39 (14 percent) were assigned to teach outside of their home department this fall while 86 percent taught in their home department.<sup>53</sup> Two teaching fellows in the petitioned-for units had concurrent appointments in two of the petitioned-for departments in the fall of 2016.<sup>54</sup>

Among the remaining non-petitioned-for academic departments, Yale appointed 539 teaching fellows for the fall 2016 semester, of whom 131 (24 percent) were appointed to teach in departments other than their home department.<sup>55</sup>

According to a chart submitted into evidence by the Union, there were 317 teaching fellow assignments among the ten petitioned-for departments in the fall 2016 semester.<sup>56</sup> Of those assignments, 253 (79.8 percent) were made to graduate students who taught in their home department, 18 (5.7 percent) were made to Ph.D. students from different academic departments that have their own allocations, 27 (8.5 percent) were made from terminal masters programs or professional schools that have their own allocations, and 19 (6 percent) were made from “pure exporters,” i.e., programs that have graduate students who are required to teach but have no allocation of their own.

#### Pattern of bargaining at Yale and in the industry

UNITE HERE Local 34 currently represents a university-wide unit of clerical and technical employees at Yale, and UNITE HERE Local 35 currently represents a university-wide unit of service and maintenance employees at Yale.<sup>57</sup>

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departments. At the other end of the spectrum, only 1 of 58 teaching fellows appointed by the Physics Department came from a department other than Physics.

<sup>53</sup> See Employer Exhibit 38.

<sup>54</sup> Thus, Jiaying Gu, who is a graduate student in the East Asian Languages and Literature Department, served simultaneously as a grader/tutor for East Asian Languages and Literature and a discussion section leader for the History of Art Department. Toshihiko Shimasaki, who is a graduate student in the Physics Department served simultaneously as a discussion section leader in the Physics Department and as a grader/tutor in the East Asian Languages and Literature Department.

<sup>55</sup> See Employer Exhibit 35.

<sup>56</sup> See Petitioner’s Exhibit 33 (a). The Union’s analysis reflects the total number of teaching assignments rather than the number of teaching fellows. As some teaching fellows had more than one assignment, the Union’s total of 317 assignments is slightly higher than Yale’s total of 310 teaching fellows.

<sup>57</sup> Yale introduced into evidence collective-bargaining agreements for adjunct faculty units at 34 private sector colleges and universities, which it represented to be all such agreements in the country. Yale also submitted into evidence a summary of the recognition clauses in those agreements prepared by its witness, Samuel Estreicher, a professor at New York Law School. Estreicher testified that all of the adjunct faculty units are university-wide, college-wide, or system-wide, depending on the institution, with the exception that there are commonly carve-outs for entities such as medical schools, schools of dentistry, and law schools. None are

## **ANALYSIS AND CONCLUSION**

### **Employee status**

Yale maintains that *Columbia University*, supra, in which the Board recently held that student assistants are statutory employees, was wrongly decided. I am constrained to follow Board precedent, and this is a matter that may be resolved only by the Board.

Yale also maintains that its teaching fellows are distinguishable in four respects from the student assistants/instructional officers whom the Board found to be statutory employees in *Columbia University* and that it has, thus, met its burden of demonstrating that they are not statutory employees. I conclude that Yale has not shown any significant differences between its teaching fellows and those in the *Columbia University* case that would compel a different result here.

Yale contends, first, that its teaching fellows are distinct from the student assistants in *Columbia University* in that “[t]he University’s Teaching Fellows Program is a unitary program of the Graduate School of Arts and Sciences that sets out central and uniform policies and procedures governing all academic departments and that is designed to prepare doctoral candidates for their eventual role as educators.” I find that the fact that Yale has a centralized program for its teaching fellows, while Columbia University does not appear to have a centralized teaching program, does not alter the fact that Yale’s teaching fellows meet the common-law test for employee status set forth in *Columbia University*. Thus, regardless of the centralized nature of the TFP, Yale directs and oversees the activities of its teaching fellows, and they receive compensation in exchange for providing services to Yale.

To the degree that Yale asserts that learning to teach and to evaluate student work is fundamental to the education of its graduate students, the *Columbia University* Board explicitly rejected the argument that a common-law employee should be excluded from the Act because his or her employment relationship co-exists with an educational

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departmental units, although there is a bargaining unit limited to adjunct faculty employed at Cornell University’s School of Industrial and Labor Relations (ILR). (Estreicher testified that the ILR School is a separate school rather than a department of Cornell.) I take administrative notice that, in Case 13-RC-168082, the Board recently certified a unit limited to English Language Learning Program faculty and team members at Loyola University, after an election in which the Employer stipulated to the appropriateness of the unit.

Yale also introduced collective-bargaining agreements for graduate teachers at 34 universities, 33 of which are public sector institutions. With minor exceptions, all of the units at the 33 public sector institutions are university-wide. At New York University, which has the only private sector unit of graduate teachers in the country, the bargaining unit is university-wide, with the exclusion of some schools. I take administrative notice that, in Case 01-RC-186442, Region 1 recently held an election pursuant to a stipulated election agreement among a university-wide unit of teaching fellows and research assistants at Harvard University.

relationship. The *Columbia University* student assistants were similarly required to teach as part of their academic requirements.

Yale contends, second, that “the University’s undergraduate students are not subject to core curriculum requirements as a result of [which] the teaching performed by the University’s graduate students is in the main, closely connected to their principal areas of study.” In finding student assistants to be statutory employees, the *Columbia University* Board noted that some of them teach components of Columbia University’s core curriculum, which is Columbia’s signature course requirement for all undergraduates regardless of major. The Board found that the fact that the student assistants taught for such critical courses as Columbia’s core curriculum suggested that the purpose extended beyond the mere desire to help inculcate teaching skills and showed the importance of having students assist in the business of universities by providing instructional services for which undergraduate students pay tuition. *Columbia University*, supra, 364 NLRB No. 90, slip op. at 14, 16.

Yale appears to argue that the impact of the core curriculum at Columbia University is that many graduate students are siphoned off to teach core curriculum courses, which require many teaching fellows to staff them. The lack of a core curriculum at Yale, it argues, permits its teaching fellows, in contrast, to perform teaching that is more related to their professional training than it is to service to the University.

I find that this distinction does not detract from the teaching fellows’ employee status. Assuming that the absence of a core curriculum at its institution results in Yale teaching fellows doing more teaching that is related to their own academic interests than is the case at Columbia University, Yale still needs the services of its teaching fellows to assist in the business of the university by teaching those courses, for which its undergraduate students pay tuition regardless of their status as core curriculum courses. Again, the Board has found that the fact that there is also an educational benefit to graduate student teachers when they teach does not warrant their exclusion from the Act’s coverage.

Yale contends, third, that “teaching is expected in all departments, but not required in all departments, of graduate students at the University.” The *Columbia University* Board noted that most Ph.D. candidates at Columbia University are required to take on teaching duties for at least one semester as part of their academic requirements, although many departments require additional semesters of teaching as a condition for obtaining a degree. *Columbia University*, supra, 364 NLRB No. 90, slip. Op. at 13. As teaching is expected of graduate students at both Yale and Columbia Universities, I find no distinction between the two cases on this basis.

Yale contends, fourth, that its teaching fellows are distinguishable from the student assistants at Columbia University, on the ground that “[g]raduate students may and do receive the portion of the stipend allocable to teaching whether or not they have

received a teaching appointment.” Thus, at Yale, Ph.D. students receive the full amount of their stipend throughout their time at Yale, regardless of whether they are in one of their teaching years. Further, during their teaching years, if Yale is unable to provide a Ph.D. student an appropriate teaching assignment, the student nonetheless receives the standard stipend amount. Yale appears to argue that, in these circumstances, receipt of a stipend is not consideration for services.

In *Columbia University*, the Board found that Columbia University fully funds most graduate students for at least five years, and taking on teaching or research duties is a condition of graduate students’ full receipt of funding from the University in their second through fourth years. The record showed that when graduate students do not perform their assigned instructional duties, they are not paid. Thus, when one particular student assistant was removed from his teaching assistantship, his stipend was cancelled. The Board held that the explicit conditioning of awards on performance of teaching duties demonstrated that Columbia University offers student assistants stipends as consideration for fulfilling their duties to perform instructional duties on the University’s behalf. *Columbia University*, supra, slip op. at 13-14, 15.

To the degree that Yale contends that that its graduate students receive the full stipend amount in both their teaching and non-teaching years, these facts mirror those in *Columbia University*. At both Yale and Columbia University, receipt of a full stipend is conditioned on teaching only during certain years. Thus, this argument does not demonstrate that this case is distinguishable from *Columbia University*.

It is true that, at Yale, unlike Columbia University, graduate students in their teaching years may receive the standard stipend, even if they do not teach, if Yale cannot find an appropriate teaching assignment for them. However, the record does not reveal how often this occurs, nor did Yale provide any examples of graduate students in their teaching years who did not teach but nonetheless received a full stipend for this reason. In these circumstances, I decline to find that the facts in this case are sufficiently distinguishable from those in *Columbia University* to warrant a different result.

### **Appropriate unit**

In *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enforced sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6<sup>th</sup> Cir. 2013), the Board set forth the standard to be applied when an employer contends that the smallest appropriate unit contains employees who are not in the petitioned-for unit. When a petitioned-for unit consists of employees who are readily identifiable as a group, and the Board finds that the employees in the group share a community of interest after considering the traditional criteria, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that employees in the group could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an overwhelming

community of interest with those in the petitioned-for unit. Id. at 945-946. The Board noted that the D.C. Circuit has held that the proponent of the larger unit must demonstrate “an overwhelming community of interest” such that there “is no legitimate basis upon which to exclude certain employees” from the unit because the traditional community-of-interest factors “overlap almost completely.” Id. at 944, citing *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421-422 (D.C. Cir. 2008). It is the employer that bears the burden of demonstrating the existence of an overwhelming community of interest. *Guide Dogs for the Blind, Inc.*, 359 NLRB No. 151, slip op. at 5, fn. 12 (2013).

The teaching fellows in each academic department are readily identifiable as a group

As a threshold matter, the petitioned-for employees must be readily identifiable as a group. The Board has held that this requirement may be met by units based on job classifications, departments, functions, work locations, skills, or similar factors. *Specialty Healthcare*, supra at 945. The term “readily identifiable as a group” is not another version of the community-of-interest analysis, but means simply that the description of the unit is sufficient to specify the group of employees the petitioner seeks to include. *DPI Secureprint, Inc.*, 362 NLRB No. 172, slip op. at 4, fn. 10 (2015). For the following reasons, I find that the teaching fellows in each of the nine petitioned-for departments are readily identifiable as groups based on their departments, classifications, and functions. Thus, each petitioned-for unit is identified as all teaching fellows who teach for a specific academic department.

Yale asserts that the petitioned-for employees are not readily identifiable as a group because the teaching fellow classification is not specific to any single academic department and is common to all Yale’s academic departments. However, the “readily identifiable as a group” criterion does not compel a union to seek all employees employed by the employer in the same classification, where the unit sought tracks some other line drawn by the employer. Thus, in *Fraser Engineering Co.*, 359 NLRB 681 (2013), the Board found that a petitioned-for unit of all pipefitters, welders, plumbers and HVAC service technicians employed by the employer were readily identifiable as a group, even though the unit excluded pipefitters, welders, and plumbers working for the employer’s wholly owned subsidiary.

Yale also asserts that the petitioned-for units are not readily identifiable as a group on the ground that there is no administrative or operational underpinning for departmental units, given the high degree of overlap among all of the academic departments. Yale argues that departmental lines are blurred as a result of numerous joint appointments, combined degrees, cross-listed courses, interdisciplinary programs, and the appointment of teaching fellows to teach in departments other than the departments in which they are pursuing their degrees. I disagree. The fact that the academic interests of some faculty members and graduate students straddle more than one department does not negate the fact that academic departments are administrative groupings that Yale has chosen to create, pursuant to its own bylaws. Thus, each

academic department has a separate administrative structure that includes a department chair and other departmental administrators, the TFP allocates teaching resources on a department-by-department basis, and the academic departments make all teaching fellow appointments. In these circumstances, units based on academic departments are readily identifiable.

Finally, Yale argues that the petitioned-for employees are not readily identifiable as a group because teaching fellow appointments are short term in nature and subject to change semester to semester, so that the mix of teaching fellows with appointments to any particular department will change from one term to the next, and a student may teach in one department one semester and another department the next. In *Columbia University*, supra, slip op. at 21, the Board responded to the University's argument that certain classifications of student assistants should be excluded from the unit as temporary employees, as follows: "[N]otwithstanding the length of any individual assistant's tenure, the University will continuously employ groups of Master's and undergraduate student assistants to perform research and instructional duties across semesters (and, although the precise composition of these groups will differ from semester to semester, there will typically be some individual student assistants who are carried over from one semester to another.)" Similarly, at Yale, while the individual identities of the teaching fellows in a given academic department may change from semester to semester, each academic department will continuously employ a group of teaching fellows. It is the group that must be readily identifiable rather than individual employees.

The teaching fellows in each of the nine academic departments share a community of interest

In determining whether employees in a proposed unit share a community of interest, the Board examines:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

*Specialty Healthcare*, at 942, citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002).

Here, the employees in each petitioned-for unit share a community of interest with one another. In each of the nine units, the teaching fellows work in the same academic department, share a common job classification, and perform the same types of duties: leading discussion or lab sections, holding office hours for students, and grading student assignments. Their work has a shared purpose and functional

integration, as they all teach undergraduate courses offered by their respective departments. Because of the specialized skills often required to teach particular courses, temporary interchange between teaching fellows is infrequent, but when it is necessary for teaching fellows to find a substitute teaching fellow, they seek a teaching fellow from the same department who is currently teaching the same course or who has taught it before.

In the case of courses that have multiple teaching fellows, those teaching fellows share common immediate supervision by the course instructor and have regular work-related contact with one another at course lectures and in meetings with the course instructor. Many teaching fellows teaching the same course collaborate, both in person and by email, on lesson plans, grading, course review sessions, course content and teaching strategies.

The record reflects that those teaching fellows who are the sole teaching fellow for a course also have regular, work-related contact with other teaching fellows in their department. I note that in the Physics, Mathematics, Geology and Geophysics, and English Departments, graduate students, including teaching fellows, either share an office or have offices near one another; and, the Geology and Geophysics, Eastern Asian Languages and Literature, and History Departments have graduate student lounges where graduate students in the department, including teaching fellows, congregate. Eastern Asian Languages and Literature teaching fellow Jeffrey Neidermaier testified that, although he teaches a Japanese language course by himself, the teaching fellows in the department work in the same building and in the same spaces in that building. In addition, Neidermaier testified that, when he taught courses alone, he nonetheless sought advice from other teaching fellows in the department who were currently teaching other courses, about grading strategy, teaching a difficult concept, and balancing teaching work with graduate studies. Further, teaching fellows in the petitioned-for departments, including those who are the only teaching fellow for a course, regularly seek advice and materials from teaching fellows who have taught the same course previously. Teaching fellows within the same department also have contact with one another when they attend department-specific teacher training. I find that the teaching fellows within each academic department have regular contact with one another, despite the fact that some departments' faculty offices and classrooms are dispersed among more than one building. "A petitioned-for unit is not rendered inappropriate simply because the petitioned-for employees work on different floors of the same facility." *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 8 (2014), *enforced*, *Macy's, Inc. v. NLRB*, 824 F.3d 557 (5<sup>th</sup> Cir. 2016).

The teaching fellows within each petitioned-for department receive the same pay and benefits. They work the same number of hours depending on the status of their appointment as a TF10 or TF20 assignment. Those teaching in the same department are subject to the same working conditions, some of which vary from department to department. For example, the Physics Department, unlike other departments, provides all of its graduate students and, hence, all of its teaching fellows, with a laptop.

Teaching fellows in the Geology and Geophysics Department lead field trips in the area and around the world. Teaching fellows in the History of Art Department take students to art galleries and must prepare visual material for their students.

Yale contends that simply teaching within the same academic department does not demonstrate a community of interest among teaching fellows, because Yale's academic departments are neither administrative nor operational in nature.<sup>58</sup> It argues that Yale's organizational charts do not designate any academic departments as separate administrative units within the University, that an academic department at Yale is simply a group of faculty with common interests, and that the lines between departments merely represent an academic community's attempt to "divid[e] up a multidimensional intellectual space." As noted above, I find that academic departments do constitute a meaningful administrative grouping for purposes of community of interest, in that each academic department has its own administrators, Yale allocates teaching resources separately to each academic department, and each academic department appoints its own teaching fellows.

Yale also argues that teaching fellows do not share a community of interest due to lack of common supervision at the department level. Thus, only those teaching fellows who are assigned to the same course share common immediate supervision. Yale argues that because there is no supervisory relationship between teaching fellows and the chair, DGS, or DUS of the department, their only common supervision is at the Graduate School level. Without reaching the question of whether department-level administrators are statutory supervisors, I find that their oversight of the TFP is sufficient to demonstrate common supervision for purposes of the community of interest analysis. Thus, it is department-level administrators, whether through a DGS, DUS, registrar, or committee, who hire the teaching fellows. Although the only formal grievance procedure resides at the Graduate School, it is clear that some grievances and complaints by teaching fellows are handled at the department level. Thus, a DGS in the Eastern Asian Languages and Literature Department intervened when a teaching fellow

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<sup>58</sup> In its post-hearing brief, Yale argues that it is improper to rely on cases outside academia, which ignores the Supreme Court's admonition in *NLRB v. Yeshiva University* that principles developed for use in the industrial setting cannot be imposed blindly on the academic world. 444 U.S. 672, 680-681 (1980). I disagree. In *Yeshiva*, which involved the issue of the managerial status of faculty rather than unit determination, the Court went on to analogize to the industrial model, observing that the business of the University is education, that the faculty determines within each school the product to be produced, the terms upon which it will be offered, and the customers who will be served. *Pacific Lutheran University*, 361 NLRB No. 157, slip op. at 14-15., citing *Yeshiva*. The *Columbia University* Board relied on cases outside academia in determining whether the student assistants in the petitioned-for unit shared a community of interest. 364 NLRB, slip op. at 18-19. I note that Yale itself relies on numerous cases outside the academic sphere in its post-hearing brief. See also, *Livingston College*, 290 NLRB 304, 305 (1988) (In determining the appropriateness of a nonprofessional unit in a college or university environment, the Board applies the rules traditionally used to determine the appropriateness of a unit in an industrial setting) (citations omitted).

complained that his hours were excessive, and the Chair of the History Department intervened in a dispute between two teaching fellows. While discipline is rare, and all disciplinary matters must be referred to the Graduate School, the only example in the record of the termination of a teaching fellow involved an effective recommendation by an academic department, as Dean Schirmeister terminated the teaching fellow without conducting any independent investigation of the matter.

Yale has failed to demonstrate that its remaining teaching fellows share an overwhelming community of interest with the petitioned-for units of teaching fellows

The Board has explained that employees inside and outside a proposed unit share an overwhelming community of interest, for example, when the proposed unit is a “fractured” unit. *Specialty Healthcare*, supra at 946. A fractured unit occurs when a petitioned-for unit constitutes an arbitrary segment of what would be an appropriate unit or seeks combinations of employees that are too narrow in scope or that have no rational basis. *Id.*

In explaining what types of showings are not sufficient to demonstrate an overwhelming community of interest, the Board has explained that the mere fact employees in the proposed unit also share a community of interest with additional employees does not render the smaller unit inappropriate. *Specialty Healthcare*, supra at 943. “Nor is a unit inappropriate simply because it is small. The fact that a proposed unit is small is not alone a relevant consideration, much less a sufficient ground for finding a unit in which employees share a community of interest nevertheless inappropriate.” *Id.* Thus, a cohesive unit prevents a minority interest group from being submerged in an overly large unit. *Id.* at 943-944, citing *Chemical Workers Local 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 172-172 (1971).

Yale has failed to demonstrate that all of its teaching fellows share such an overwhelming community of interest with the teaching fellows in each of the petitioned-for units that the units sought are fractured. First, units based on academic departments track a dividing line drawn by Yale itself, which the Board has found to be particularly significant. *Macy’s, Inc.*, supra, slip op. at 9 (2014) (petitioned-for cosmetics and fragrance employees work in a separate department from all other selling employees, tracking a dividing line drawn by the employer); *DPI Secuprint, Inc.*, 362 NLRB No. 172, slip op. at 5 (2015) (petitioned-for unit conforms to the departmental lines established by the employer); *Fraser Engineering Co.*, 359 NLRB 681, slip op. at 1 (2013) (unit tracks a dividing line drawn by the employer itself). Thus, it cannot be said that units based on departmental lines drawn by Yale have no rational basis. For the reasons set forth above, I reject Yale’s assertion that academic departments are merely an attempt to divide up “a multidimensional intellectual space” rather than an administrative dividing line drawn by Yale itself.

It is true, as contended by Yale, that teaching fellows university-wide share common duties, hours, wages, and health care benefits. Further, the Graduate School exerts significant centralized control over the TFP. Thus, the Graduate School has established the various categories of assignments and levels to which teaching fellows may be assigned and determines compensation and benefit levels for all teaching fellows. The Graduate School determines who is eligible to become a teaching fellow, both by virtue of its role in the admission process for Ph.D. students and by virtue of its authority to establish rules regarding the years in which graduate students may teach and its English proficiency requirement. All teaching fellows are appointed by means of centralized TFP software. The Graduate School provides the vast majority of the funding for teaching fellows and allocates teaching resources to the academic departments. The Graduate School prescribes rules that academic departments must follow in appointing teaching fellows, such as requiring priority for graduate students in their teaching years, and determining the number of sections to be taught by teaching fellows, maximum section size, and the minimum number of students that must be enrolled to warrant the assignment of a teaching fellow. Teaching fellows are subject to rules set forth in the Graduate School's P&P, which may not be superceded by departmental handbooks. The Graduate School must approve all leaves of absence. The Graduate School polices its rules, e.g., by surveying teaching fellows to ensure that they are not working excessive hours. Finally, bargaining history at Yale supports a university-wide unit, as UNITE HERE locals currently represent two university-wide units, one for clerical and technical employees and one for service and maintenance employees.<sup>59</sup>

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<sup>59</sup> Yale relies on *Yale University*, 184 NLRB 860 (1970), in which the Board found that a unit of clerical and technical employees limited to the EPH Department at Yale's School of Medicine was inappropriate, where personnel policies and practices were standardized for the entire university, the department was dependent on various services provided by the university, identically titled employees performing similar work were found throughout the university, the petitioned-for employees shared a building with employees of other departments, and there was pattern of university-wide bargaining. Yale also relies on *Harvard College*, 269 NLRB 821 (1984), in which the Board found that a proposed unit limited to clerical and technical employees of the Harvard Medical Area Schools was inappropriate.

I find these cases, both of which pre-dated *Specialty Healthcare*, to be distinguishable. In the *Harvard* case, which involved personnel such as secretaries, librarians, and keypunch operators, the Board found that the skills required to perform their responsibilities were virtually identical to those of employees in the same classifications employed elsewhere in the university. In the *Yale* case, the EPH Department did not have its own department chair or administrative personnel, and the Board noted in its conclusion, "While the research conducted in the department may vary from that undertaken elsewhere, the skills and techniques employed by the EPH personnel do not vary substantially from those of other Yale employees holding parallel jobs." In both cases, there was evidence of permanent transfers into and out of the petitioned-for units. Unlike the clerical personnel in the *Harvard* and *Yale* cases, the teaching fellows in each academic department at Yale have unique skills, as a result of which they are not interchangeable, and each department has its own department chair and administrators.

Nonetheless, the community-of-interest factors do not overlap almost completely, as required by *Specialty Healthcare*. The teaching fellows from each department are separately supervised. There is no common immediate supervision of teaching fellows in different departments. Significant second-level control of the working lives of teaching fellows, such as the hiring process, is exercised at the department level, so that the only common supervision of all teaching fellows is at the Graduate School level. Such common supervision at this higher, policy-making level is insufficient to find an overwhelming community of interest. *Macy's Inc.*, supra, slip op. at 12 (although all selling employees were commonly supervised at the second and highest level by the store manager, such common upper level supervision was outweighed by other factors favoring a separate unit). While teaching fellows university-wide perform duties that are generally similar in nature, such as leading a discussion section and grading, I find that the teaching fellows in each department have meaningfully unique qualifications, training, and skills in the subject matter of their courses. Thus a teaching fellow in the Eastern Asian Languages and Literature Department may be required, for example to have advanced knowledge of Japanese or Chinese language and literature, a teaching fellow in the mathematics department requires training in the analysis and theory of calculus, a teaching fellow in the Physics Department requires an undergraduate background in Physics, and a teaching fellow in the Art History Department must have extensive training in art history.

As a consequence, there is no evidence of any permanent transfers of teaching fellows from one department to another during the course of the same semester. The record reflects that only three teaching fellows have taught in more than one department, either because of simultaneous appointments to two different departments or as a result of teaching in different departments during different semesters. Nor is there evidence of any temporary interchange between departments, i.e., a teaching fellow from one department filling in for a teaching fellow from another department. The only evidence of temporary interchange is that teaching fellows occasionally ask another teaching fellow who is currently teaching the same course or who has taught it in the past, i.e., a teaching fellow from the same department, to substitute for them when needed.

Yale asserts that the fact that teaching fellows sometimes teach in departments other than the department in which they are pursuing their degrees constitutes evidence of a form of interchange. I disagree. The Board uses the term "interchange" to refer to an employer's permanent or temporary transfer of an employee from a position within the proposed unit to a position outside the proposed unit, or vice versa. How employees spend their time outside the sphere of work is irrelevant to the analysis. As the Board noted in *Columbia University*, the student-teacher relationship involves different interests than the employee-employer relationship, and collective bargaining and education occupy different institutional spheres. *Columbia University*, supra, slip op. at 7.

There is little evidence of work-related contact between teaching fellows in different departments. Some buildings, such as the Hall of Graduate Studies, house several departments, but there is no evidence of the nature or frequency of any work-related contact between teaching fellows from different departments due to sharing a building. The record does not reveal how many teaching fellows from different departments have contact with one another at Center for Teaching and Learning programs, or how often they do so, apart from the Teaching at Yale Day and the professional development seminar that all new teaching fellows are required to attend once.

The Board has held that evidence of area practice and the history of bargaining in the industry are relevant considerations. *Macy's Inc.*, supra, slip op. at 13, fn. 50. As for pattern of bargaining in this industry, I note that New York University currently has a university-wide unit of graduate teachers, but I find that that is too little experience to constitute evidence of a pattern in this newly emerging sector.

I decline to rely, as Yale requests, on evidence of the pattern of bargaining among graduate teachers at public sector institutions and adjunct faculty at private sector universities.<sup>60</sup> Yale points out that the *Columbia* Board asserted that “experience with graduate-student collective bargaining in public universities is of relevance in applying the Act, as the closest proxy for experience under the Act.” *Columbia University*, supra, slip op. at 9. While the Board did consider the experience of public universities as one factor in its analysis of the employee status issue in *Columbia*, it has never suggested that it would find experience in the public sector to be instructive in determining appropriate units at private universities. In any event, assuming that such evidence of the pattern at public universities or among adjunct faculty at private universities were to be deemed instructive, it is insufficient to overcome the lack of common supervision, qualifications, interchange and contact described above.

While a university-wide unit might also be appropriate, I find that Yale has failed to meet its burden of demonstrating that there is such an overwhelming community of interest among all of the teaching fellows at the University that there is no rational basis for approving units based on academic departments. *Macy's Inc.*, supra, slip op. at 13 (no overwhelming community of interest, where petitioned-for employees work in a separate department under separate supervision, have only limited interchange and contact with other selling employees, have distinct work areas, and work in a differently-structured department). *Guide Dogs for the Blind*, supra, slip op. at 6 (community-of-interest factors do not overlap completely, where petitioned-for employees work in separate administrative departments, report to different managerial chains, work in separate physical spaces, perform different job functions that require specialized skills and training, and there is little formal contact or interchange with other classifications).

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<sup>60</sup> Unlike *Macy's, Inc.*, supra, slip op. at 13-18, there has been no argument advanced here that there is a “presumptively appropriate” university-wide unit.

I reject Yale's assertion that *Columbia University*, supra, confirms the appropriateness of university-wide units in the higher education context. The only unit issue confronted by the Board in *Columbia* was the University's contention that some of the petitioned-for employees, i.e., undergraduate and Master's degree student assistants, were inappropriately included in a unit with Ph.D. students. The Board found that all of the petitioned-for employees shared a sufficient community of interest to form an appropriate unit. As the petitioned-for unit was university-wide, the *Columbia* Board was not confronted with the issue before me, i.e., whether a department-based unit might also be appropriate.

Accordingly, I shall direct separate elections in the nine petitioned-for units and find that the following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All teaching fellows employed by the Employer at its New Haven, Connecticut facility who teach in the East Asian Languages and Literature Department, including discussion section leaders, part-time acting instructors, associates in teaching, lab leaders, and grader/tutors, but excluding all other employees, managers, guards and supervisors as defined in the Act.

All teaching fellows employed by the Employer at its New Haven, Connecticut facility who teach in the English Department, including discussion section leaders, part-time acting instructors, associates in teaching, lab leaders, and grader/tutors, but excluding all other employees, managers, guards and supervisors as defined in the Act.

All teaching fellows employed by the Employer at its New Haven, Connecticut facility who teach in the History Department, including discussion section leaders, part-time acting instructors, associates in teaching, lab leaders, and grader/tutors, but excluding all other employees, managers, guards and supervisors as defined in the Act.

All teaching fellows employed by the Employer at its New Haven, Connecticut facility who teach in the History of Art Department, including discussion section leaders, part-time acting instructors, associates in teaching, lab leaders, and grader/tutors, but excluding all other employees, managers, guards and supervisors as defined in the Act.

All teaching fellows employed by the Employer at its New Haven, Connecticut facility who teach in the Political Science Department, including discussion section leaders, part-time acting instructors, associates in teaching, lab leaders, and grader/tutors, but excluding all other employees, managers, guards and supervisors as defined in the Act.

All teaching fellows employed by the Employer at its New Haven, Connecticut facility who teach in the Sociology Department, including discussion section leaders, part-time acting instructors, associates in teaching, lab leaders, and grader/tutors, but excluding all other employees, managers, guards and supervisors as defined in the Act.

All teaching fellows employed by the Employer at its New Haven, Connecticut facility who teach in the Physics Department, including discussion section leaders, part-time acting instructors, associates in teaching, lab leaders, and grader/tutors, but excluding all other employees, managers, guards and supervisors as defined in the Act.

All teaching fellows employed by the Employer at its New Haven, Connecticut facility who teach in the Geology and Geophysics Department, including discussion section leaders, part-time acting instructors, associates in teaching, lab leaders, and grader/tutors, but excluding all other employees, managers, guards and supervisors as defined in the Act.

All teaching fellows employed by the Employer at its New Haven, Connecticut facility who teach in the Mathematics Department, including discussion section leaders, part-time acting instructors, associates in teaching, lab leaders, and grader/tutors, but excluding all other employees, managers, guards and supervisors as defined in the Act.

**Others permitted to vote:**

The classifications of graders without contact and teaching assistants (teaching fellows who are professional school and terminal masters degree students) may vote in the election, but their ballots will be challenged, because their eligibility has not been resolved. No decision has been made regarding whether the individuals in these classifications are included in, or excluded from, the bargaining units. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the units found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by UNITE HERE LOCAL 33.

### **A. Election Details**

The election will be a manual election to be held on a date, time and place to be determined.

### **B. Voting Eligibility**

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

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

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

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

### **C. Voter List**

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

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **January 27, 2017**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

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

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

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

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

#### **D. Posting of Notices of Election**

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

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

### **RIGHT TO REQUEST REVIEW**

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

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

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

Dated: January 25, 2017



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