

PRELIMINARY STATEMENT

Graduate students at the Massachusetts Institute of Technology (“MIT,” the “Institute” or the “Employer”) come to MIT primarily to study under the academic direction of the Institute’s faculty. As such, *all* graduate students have an academic relationship with MIT, but only *some* of those students also have an employment relationship with the Institute. At issue in this case is whether graduate students who receive only fellowship awards from and through MIT (“Fellows”) are employees under Section 2(3) of the National Labor Relations Act (the “Act”). Consistent with National Labor Relations Board (the “Board”) precedent in *Columbia University*,¹ they are not. As stated in *Columbia*,² a graduate student is an employee under the Act only where (1) the student is required to provide services under the direction and control of the university and (2) the student’s funding is conditioned on the performance of those services. The petitioned-for Fellows at MIT do not meet this test.

Unlike the student-employees in the current bargaining unit of research assistants (“RAs”), teaching assistants (“TAs”), and Instructor Gs,³ Fellows have no service requirements tied to their fellowship awards. They are not required to work on a particular faculty member/principal investigator’s (“PI”) research project or course in order to maintain their funding. Instead, their fellowship funding is akin to a scholarship, and they receive such funding to pursue their own academic programs and objectives. A Fellow retains their fellowship award so long as they make satisfactory academic progress, which is a baseline requirement for all students to maintain active enrollment status at MIT.

¹ 364 NLRB 1080 (2016).

² *Id.* at 1094.

³ For ease of reference, MIT often refers to these three categories of appointments collectively as “assistantships.”

It is undisputed that, unlike assistantships, fellowships are held by the individual student and are portable—Fellows are able to switch advisors, labs, and/or research groups to pursue their academic research, all while maintaining their funding. As such, Fellows have no supervisors as contemplated by the Act—only academic supervisors and advisors. Furthermore, unlike RA and TA appointments, which come with numerous terms and conditions of employment—*e.g.* hours of work requirements, vacation and time off policies, rules on employment authorization and tax withholding, rules on termination for poor performance, etc.—fellowships lack any terms, conditions, or other indicia of employment.

The Petitioner in this case, the United Electrical, Radio, and Machine Workers of America (“Petitioner” or “Union”), does not dispute most of these essential points. Instead, Petitioner attempts to recast fellowships as employment because Fellows—like all graduate students in research-based degree programs—perform academic research towards a thesis. It is undisputed that all graduate students must meet rigorous academic expectations set by MIT. For students in certain research-based programs (in particular those in science and engineering disciplines), this thesis research takes place in the *learning environment* of the lab or research group. Graduate students conducting thesis research in these environments are graded and receive academic credit for that academic work. Petitioner nevertheless argues that conducting thesis research in these environments somehow transforms Fellows into employees—solely on the basis that Fellows also receive financial assistance from MIT.

Petitioner’s position is untenable, inconsistent with *Columbia*, and would result in a significant expansion of Board precedent with respect to graduate students. Taken to its logical conclusion, Petitioner’s reasoning would suggest that all graduate students who receive financial assistance from their universities and conduct thesis research are employees. This cannot be the

law. Petitioner has already excluded from its proposed unit over 300 graduate students who conduct thesis research but who are self-supported or otherwise receive no funding from MIT. Fellows are much more similar to these self-funded students than they are to RAs and TAs. Indeed, like Fellows, these self-funded students conduct thesis research in labs and research groups under the guidance and direction of faculty members, and are required only to make satisfactory academic progress.

As the undisputed evidence shows, the distinction between assistantships and fellowships extends beyond labor law to federal immigration law, federal tax rules, and federal regulations concerning the administration of sponsored research. If the Board were to ignore these well-established distinctions, and credit the Petitioner's argument that thesis research and employment are equivalent—there may be significant negative consequences to both MIT and its students, in particular MIT's international students. Indeed, MIT's international students rely on this distinction between academic work and employment in order to make satisfactory academic progress while complying with federal immigration law. If thesis research is deemed equivalent to employment services, as Petitioner argues, then the time an international student spends on thesis research would count toward the 20/hr-week employment cap set by federal immigration law for these students. This would result in an inequitable two-tiered system where MIT's international students would be unable to dedicate sufficient time to their theses to make satisfactory academic progress or, at a minimum, would require significantly more time to obtain their degrees as compared to their domestic-student peers. Such a ruling would also raise significant issues as to the proper scope of bargaining between MIT and its Fellows, and may result in a significant intrusion by the Board into academic matters over which it has no jurisdiction or expertise.

Unsurprisingly, public sector case law has repeatedly found that fellows who do not provide services to their institutions are not employees. In addition, industry practice in both the private and public sectors reveals that graduate student unions and universities across the country have excluded fellows, or similar students, from graduate student bargaining units. Although not binding on the Region, this case law and industry practice reveal further that this distinction between fellows and assistantships is common and not of MIT's making.

After a four-day hearing and over 100 exhibits, Petitioner's evidence rests mostly on the testimony of four students. The students testified, in essence, that their day-to-day lives remained more or less the same, regardless of whether they were on a fellowship or research assistantship. As explained below, this testimony is incomplete, beside the point, and does not sufficiently rebut the overwhelming documentary evidence and testimony provided by MIT. The students' testimony stops well short of demonstrating that these students, who were required to fulfill academic expectations and were graded and received academic credit for their research, received fellowship funding *conditioned on performing specific services for MIT*. Moreover, these students spoke only to their own personal experiences, and failed to generalize anything to the remaining 1,468 Fellows in the proposed unit.

MIT respectfully submits that Fellows are not employees under the Act and, therefore, the Petition must be dismissed.

PROCEDURAL HISTORY

On September 26, 2022, the Union filed a Petition for Representation with Region 1 of the Board seeking an election in which "all graduate fellows enrolled in Massachusetts Institute of Technology (MIT) degree programs who are employed to provide instructional or research services" could vote on whether they wished to be added to an existing certified unit represented

by the Petitioner of all graduate students enrolled in MIT degree programs who are employed to provide instructional or research services, including research assistants, teaching assistants, and instructor G's. (See Case No. 1-RC-289879). That unit was certified on April 19, 2022 following an election held on April 4-5, 2022. In the earlier case, the parties excluded all Fellows by stipulated agreement.

In a Statement of Position filed with the Region on October 11, 2022, MIT replied to the Petition as follows:

The Union's proposed unit is comprised of individuals none of whom are employees within the meaning of the Act. Since they are not employees, they do not have the right to form their own bargaining unit nor can they be added to the existing bargaining unit of Research Assistants, Teaching Assistants and Instructor Gs.

A virtual hearing was held on October 19, 20, 21 and 24, 2022. Essie F. Ablavsky served as the Hearing Officer for Region 1. Representing the Employer were Nicholas DiGiovanni and Damien DiGiovanni of Morgan, Brown & Joy, 200 State Street, Boston, MA 02109 and also Antonio Moriello, Counsel/Office of the General Counsel, Massachusetts Institute of Technology, 105 Broadway/NE36-6201, Cambridge, MA 02142. Representing the Petitioner was Thomas W. Meiklejohn, Livingston, Adler, Pulda, Meikeljohn & Kelly, 557 Prospect Ave., Hartford, CT 06105.

Post-hearing briefs were due to be filed with the Region on or before November 10, 2022.

THE FACTS

A. Background of MIT and its Schools, Departments, and Academic Programs

MIT is a private non-profit institution of higher education located in Cambridge, MA, and is widely considered one of the world's leading educational institutions and research universities. MIT's mission is "to advance knowledge and educate students in science,

technology, and other areas of scholarship that will best serve the nation and the world in the 21st century.” (Petitioner Exhibits 1, 2; Transcript at 42-43⁴). The Institute offers bachelor’s degrees for undergraduates and multiple graduate degrees at both the doctorate and master’s levels.

MIT’s academic organization includes five Schools and one College, all of which operate somewhat differently in various respects with regard to admissions and funding of students: the School of Architecture and Planning; the School of Engineering; the School of Humanities, Arts and Social Sciences; the Sloan School of Management; the School of Science; and the Schwarzman College of Computing. (Er. Ex. 5). The Institute’s academic departments are housed within the Schools and College, and MIT’s academic programs are operated by one or more academic departments.

MIT offers 55 doctoral degree programs. (Er. Ex. 5). While each program has its own set of academic requirements and obligations, generally speaking, obtaining a doctoral degree from MIT “*requires the satisfactory completion of an approved program of advanced study and original research of high quality.*” (Er. Ex. 3 (emphasis added); Tr. 50).

MIT also has 54 programs that offer master’s-level degrees (minimum of one year of study) and an engineer’s degree (minimum of two years of study) (Er. Exs. 4, 5; Tr. 51, 74). Of those programs, 48 of them *require* students to conduct thesis research in order to obtain their degree. (Tr. 57). For both the doctoral and master’s programs, these thesis requirements apply to all enrolled students—*independent of funding status*.

Given the Institute’s mission and the academic requirement of thesis research for students in research-intensive degree programs, MIT operates numerous labs and research groups across

⁴ Throughout the brief, Petitioner’s Exhibits will be cited as “(Pet. Ex. __).”; Employer’s Exhibits will be cited as “(Er. Ex. __).”; and, the Transcript will be cited as, (“Tr. __).”.