

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Employer

and

**UNITED ELECTRICAL RADIO & MACHINE
WORKERS OF AMERICA (UE)**

CASE 01-RC-304042

Petitioner

BRIEF OF THE PETITIONER TO THE REGIONAL DIRECTOR

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I. INTRODUCTION

Petitioner United Electrical, Radio and Machine Workers of America (UE) (“the Union” or “UE”) seeks to represent graduate fellows enrolled at and employed by the Massachusetts Institute of Technology (“the Employer,” “the University” or “MIT”). The record establishes that fellows fit the common law definition of “employee” adopted by the Board in *Columbia University*, 364 NLRB 1080 (2016). That is, the fellows provide services to MIT by conducting original research, which fulfills the mission of the University; they are paid by MIT to conduct that research; and their work is monitored and overseen by MIT faculty members.

The Employer contends that fellows are students, not employees. In making this argument, the Employer seeks to revive the false dichotomy between “student” and “employee” which was rejected by the Board in *Columbia*. The Employer acknowledges that Research Assistants (“RAs”) at MIT are statutory employees under *Columbia*. Like RAs, fellows are graduate students, primarily doctoral students. To fulfill their academic requirements, fellows, like RAs, conduct original research. This research also provides a service to the University. Research Assistants and fellows provide the same services, in the same laboratories or other research facilities, under the supervision of the same faculty members, for the same compensation. Students often hold both classifications simultaneously. They regularly move between RA and fellow positions without any change in their duties, hours or working conditions. The only distinction between RAs and fellows is the source of the money that MIT uses to pay them. RAs are paid from research grants awarded to one or more faculty members to enable them to conduct research into a specific subject. Fellows are paid from other sources of funding,

including University funds or grants to support their research. The source of the funds that MIT uses to pay a student has no effect on the research that they conduct.¹

The holding in *Columbia* that paid student researchers are employees is controlling with respect to the MIT fellows. That holding is not limited to those who are funded out of sponsored research grants awarded to faculty members to conduct particular research. While much of the discussion in *Columbia* focused on the benefits to the university of student work on such sponsored research grants, the holding is not limited to research funded in that way. Indeed, the Board in *Columbia* specifically found students funded in a similar manner to the MIT fellows to be statutory employees. The Board found Departmental Research Assistants funded by university money, 364 NLRB at 1093, and student researchers funded by Training Grants, 364 NLRB at 1097, to be employees. Those findings are controlling in this case.

II. BACKGROUND AND PROCEDURAL HISTORY

In Case No. 01-RC-289,879, the UE petitioned to represent a unit of composed of “All graduate students enrolled in Massachusetts Institute of Technology degree programs who provide instructional or research services, including teaching assistants, research assistants, and fellows.” The Employer agreed that teaching assistants and research assistants are employees, but it contended that fellows are not employees and refused to agree to an election that included them. To enable the teaching assistants and research assistants to vote on union representation without having to await litigation

¹ There are some students who are designated and paid as fellows during the beginning of their studies, before they begin to conduct research. The Union agrees that fellows who are only taking classes and do not conduct research or perform other services for MIT are students and are not statutory employees (Bd. Ex. 2, ¶ 5). A student who does not perform services for the Employer does not meet the common law definition of employee.

of this issue, the Union agreed to proceed to an election that excluded the fellows, with the understanding that it would file a second petition in order to obtain a resolution of this issue.

The Union filed the instant petition on September 26, 2022, seeking to represent fellows who provide research or instructional services to MIT (Bd. Ex. 1(a)).² The Employer adhered to its position that fellows are not employees, and a hearing with respect to that issue was conducted on October 19, 20, 21 and 24. The parties stipulated that, if an election is directed and a majority vote in favor of representation by the UE, then the fellows will be added to the bargaining unit certified in Case No. 01-RC-289,879 (Bd. Ex. 2, ¶ 8).

The Union submits this brief in support of its position that fellows are employees who have the right to decide whether to be represented by a union.

III. **FACTS**

A. **The Employer's Operations**

MIT is a non-profit private university located in Cambridge, Massachusetts (Bd. Ex. 2, ¶ 4). Ian Waitz, the Employer's Vice Chancellor for undergraduate and graduate education, testified that MIT's mission is to "advance knowledge and to educate students in science and technology and other scholarly areas, to serve the nation and the world." (Tr. 42-43). This mission is stated in numerous official MIT on-line

² References to the record shall be as here indicated:
Transcript references shall be denoted as Tr. (followed by the page number(s))
Board Exhibits shall be denoted as Bd. Ex. (followed by the exhibit number)
Employer Exhibits shall be denoted as Er. Ex. (followed by the exhibit number)
Petitioner Exhibits shall be denoted as Pet. Ex. (followed by the exhibit number)

publications (Pet. Ex. 1, 2, 3). The Employer's policy statement elaborates: "The Institute is committed to generating, disseminating, and preserving knowledge, and to working with others to bring this knowledge to bear on the work's great challenges." (Pet. Ex. 1,2). The goal to advance knowledge is accomplished through original research (Tr. 245-46). The petitioned-for fellows conduct original research that advances knowledge (Tr. 246).

The University is divided into five schools: the School of Engineering; the School of Science; the School of Humanities, Arts and Sciences; the Sloan School of Management; and the School of Architecture and Planning; plus the College of Computing, which brings together people from different schools (Tr. 44-45). Each school, as well as the College of Computing, is headed by a dean, who reports to the Provost, who in turn reports to the President, Rafael Reif (Er. Ex. 1). Each school is divided into various departments, centers and laboratories (Tr. 45-46; Er. Ex. 2).

Graduate students at MIT pursue either a doctoral degree or a master's degree (Tr. 48). Most doctoral students are pursuing a Ph.D., but some departments offer a Science Doctorate ("ScD") as an alternative, although the degree is equivalent to the Ph.D. (Tr. 48; Er. Ex. 3). In either case, the doctoral degree requires that the student complete "original research of high quality." (Er. Ex. 3). In general, students require about six years to complete the requirements for a doctoral degree at MIT (Tr. 75). The precise requirements to obtain a doctoral degree vary by school, department and program (Tr. 65, 70).

Early in a doctoral program, students will spend at least some of their time doing classwork, but as they advance, they spend most of their time on work related to their

thesis (Tr. 75, 249-50). Classwork is graded on a system that includes the traditional academic grades of A, B, C, D, and F, as well as some special grades for students who do not complete the class (Er. Ex. 7, pp. 1-2; Tr. 76). Thesis work, on the other hand, is graded on a different system of letters that indicate whether progress is being made (Er. Ex. 7, p. 3; Tr. 77). When a thesis is completed, MIT makes it available to the public, in furtherance of the University's mission to disseminate knowledge (Tr. 72-73, 252).

The Employer offers masters' degrees, some of which also require original research leading to a thesis, and others of which, according to Waitz, "have more of a focus on classwork" and which he characterized as "professional degrees." (Tr. 48-49) Based on the pages of the on-line course catalog introduced into evidence by the Employer, it appears that the Master of Science, Master of Architecture, Master in City Planning, and Master of Engineering degrees are the research degrees that require a thesis, while the Master of Applied Science, Master of Business Administration, Master of Business Analytics and Master of Finance are the classroom-based degrees (Er. Ex. 6, pp. 2-6). A master's thesis also requires original research (Tr. 57, 67).

B. Payments from MIT to Graduate Students

Many graduate students receive financial payments from MIT (Er. Ex. 9, p.2). The University refers to these payments as "financial assistance." This "financial assistance" is administered by the Office of Graduate Education, or "OGE." (Tr. 91-92). Of relevance to this proceeding, the payments may be made to a research assistant, a teaching assistant or a fellow. "The OGE has administrative oversight of all research assistant, teaching assistant, and fellowship related appointments and awards. A graduate 'award' refers to a fellowship. An 'appointment' to the graduate student staff

refers to an RA or TA. However, these two terms are often used interchangeably.” (Er. Ex. 9, p. 2; Tr. 92).

As of October, 4105 students were enrolled in doctoral programs and 2981 in master’s degree programs, for a total of 7086 graduate students (Er. Ex. 5). Of the master’s students, 1515 or more than half were enrolled in management degrees which usually do not require a thesis. Dr. Waitz identified these as professional rather than research degrees, leaving about 5571 students in other degree programs (Er. Ex. 5, p. 1). Of the students in research degree programs, 4974 have appointments as either TAs, RAs, or Fellows, or a combination thereof (Er. Ex. 15).³ Subtracting the 1515 non-research business school master’s students from the total graduate students, nearly 90% of students in research degree programs receive payments from MIT.⁴

MIT pays Fellows, RAs and TAs from the same bank account (Pet. Ex. 5, ¶ 4). Generally, appointments to any of these positions provide for tuition, health insurance, and money to cover living expenses (Tr. 90-91; 246). When students are appointed to these positions, the University sends emails to the students informing them of the appointment and the compensation to be paid (Pet. Ex. 6, 7, 8). In each instance, the email sets forth the starting and ending date of the appointment and the nature of the appointment: RA, TA or Fellowship. The money paid for what Dr. Waitz called “living expenses” is labeled “Salary/Stipend” and shown in amounts for both the total and the monthly payments. Each such email includes a statement of the amounts of the award to the student for tuition, health insurance, and the salary/stipend.

³ The Exhibit lists 3 students as holding appointments as “Instructor G.” An Instructor G is a type of TA with increased responsibilities (Tr. 91; Er. Ex. 10).

⁴ The percentage is actually higher, as the Master of Applied Science also does not require research, but these students are not broken out separately in Employer Exhibit 5.

Each of the forms, including those sent to fellows, contains what is designated an “Important Note:”

Salary payments are issued semimonthly for the duration of the appointment. Tuition, health insurance and student life fee if applicable are credited directly to your Student Account. Be sure you complete tax withholding forms and arrange for direct deposit in Atlas. This may be done after the start date of your appointment.

(Pet. Ex. 6, 7, 8) (boldface added). The only difference between the forms sent to fellows and the forms sent to RAs is that RAs are informed of the requirement to provide I-9 documentation. As the Employer points out, RA and TA payments are subject to income tax withholding but exempt from Social Security and Medicare taxes (Er. Ex. 21, p. 2). Stipend payments are not subject to withholding but are subject to income taxes (Ibid, p. 1; Tr. 247-49).

The Employer introduced documents from its website setting out the official descriptions of RAs, TAs and Fellows. According to the Office of Graduate Education, a teaching assistant assists a faculty member in grading, helps with teaching in a class or lab, prepares equipment, posts class information on the web, and conducts discussion sections. (Er. Ex. 10). With respect to RAs, the website states, “The research assistant is a member of a research group whose principal duty is to contribute, under supervision, to a program of departmental or interdepartmental research.” (Er. Ex. 11). The evidence establishes that most fellows do work that fits this description. They are members of a research group, they work under the supervision of a member of the faculty, and they contribute to the research of the group to which they belong.

Dr. Waitz described the role of the fellow in the research group as follows:

Day to day it looks much like what other people in a research group are doing. Again, the learning environment in a research-intensive degree is the research group. It's a collaborative activity with people helping each other out, doing either computations, or experiments, or any of the tasks, either the exciting ones or the mundane ones that come along with doing original research.

(Tr. 220-21). That is, fellows like RAs are members of a research group and contribute to its research. Dr. Waitz described the relationship between a fellow and a faculty member in terms reflecting that faculty members monitor and direct the work of fellows:

[Fellows] work under the guidance and mentorship of faculty and senior research staff throughout the course of their thesis. And ultimately at the end they, again under this guidance, have developed an original contribution to a particular field of study that could be very significant.

(Tr. 73-74) He frequently resisted using the word "supervision" to characterize this "guidance" (Tr. 258), but at one point testified that one of the advantages of a fellowship over an RA appointment is "the greater freedom that students on fellowships have in choosing a research project and **supervisor.**" (Tr. 146) (emphasis added). Official University documents similarly describe the role the faculty member working with the fellow as a "supervisor." (Er. Ex. 22, p. 25). Indeed, some departments require fellows to enter into a "Research Supervision Agreement" with the faculty member overseeing their work (Pet. Ex. 16).

The principal distinction between a Research Assistantship and a Fellowship is the source of the funds that MIT uses to pay the student to conduct research. An RA is compensated out of funds awarded to a faculty member to investigate a particular subject or question. To obtain the funding, a faculty member, referred to as the principal investigator or PI, applies to a funding source, usually a government agency, describing the research he or she proposes to conduct and the benefits to society of

that research (Tr. 163, 267-69). The application will list the expenses of conducting the research, including the salaries and benefits of the personnel who will be working on the research project. The personnel funded by the grant may include one or more RAs (Tr. 164-66)⁵. If the government agency or other funding source approves the application, the funds are awarded to MIT to conduct the research described in the grant proposal (Tr. 80-81). The PI is therefore obliged to ensure that the work performed by any RA receiving funding from the grant fulfills the research description in the grant (Tr. 255).

Fellowship funding comes from a range of sources, which can be divided into two main categories. Many students have applied for and been awarded grants from government agencies or private funding sources (Tr. 217-18; Er. Ex. 31, 52). These fellowships are not conditioned on the student attending MIT, but the funds are nevertheless paid to MIT for students who elect to attend the University (Tr. 89-91; 203; 230-33; 236-37)⁶. In order to obtain one of these grants, the student must fill out an application. Like an application from a PI seeking research funding, students' applications for government fellowships must include a description of the research they plan to conduct (Tr. 269; 398-99, 489; Pet. Ex. 17). The OGE provides assistance to students seeking outside fellowships, and several departments have published guidelines that encourage students to seek such funding (Tr. 270-71). Students benefit from obtaining these fellowships because they enjoy more flexibility in conducting research and gain prestige from receiving these awards (Tr. 106-09, 228). MIT benefits

⁵ The grant would show the number of RAs working on the project, but not any individual's name.

⁶ There are other grant programs that pay the funds directly to the student. These payments are not entered into MIT's Atlas payment portal because MIT is not paying the students. The Union does not claim that students are employees of MIT unless they are paid by MIT.

because these fellowships bring in money to the University to enable it to conduct more research (Tr. 271).

Other fellowships are funded by money controlled or donated to the University. The sources of funding for these fellowships vary widely. There are grants to support research in particular areas (Er. Ex. 34, p. 5) and others for students from particular countries (Ibid, p. 7). MIT awards fellowships using funds budgeted to particular schools (Er. Ex. 32, 42), and other fellowships are awarded by particular departments (Er. Ex. 45, 46, 48). The University appoints students conducting research funded by National Institute of Health training grants as fellows (Tr. 177, 291; Er. Ex. 39, 40).

MIT has established minimum stipend levels for doctoral students and for master's students (Tr. 130-131; Er. Ex. 19). Many departments set higher levels than these minimums (Ibid). Stipend rates for fellows are normally the same as the rates set for RAs (Tr. 171). If a student is funded by a fellowship that pays a stipend less than the rate set by his or her department, the Employer supplements that funding by making an additional RA, TA or fellowship appointment (Tr. 271, 284-86; Er. Ex. 17, p.7). Stipend rates are set based upon MIT's assessment of the cost of living in the Boston area and the level deemed necessary to compete with other schools to attract top scholars in the field (Tr. 106, 246-67; Er. Ex. 19). In deciding whether to attend MIT, students generally take into consideration whether there is funding available to pay them while they conduct their research, either in the form of an RAship or a Fellowship (Tr. 81-82).

C. The Work of Fellows

As illustrated by the testimony of the four graduate student workers who testified, the duties and working conditions of fellows are indistinguishable from the duties and working conditions of Research Assistants. Before turning to the evidence from those witnesses, it is worth reminding the reader of certain undisputed facts. Fellows, like RAs, produce original research. In doing so, they fulfill one of the fundamental missions of the University – advancing knowledge (Tr. 252-4). Fellows may contribute to research that is published in peer-reviewed journals, which provides prestige to MIT and imprimatur that the research truly advanced human knowledge (Tr 254-56). All graduate students, including RAs and Fellows, are required to sign the same Proprietary Information Agreement required of faculty and other research staff (Tr. 296). According to MIT’s policy on intellectual property, “MIT owns inventions made or created by MIT faculty, students, staff, and others participating in sponsored research projects or in MIT programs using significant MIT funds or facilities....” (Pet. Ex. 4; Tr. 295). The Employer operates a fellowship program for the explicit purpose of helping researchers commercialize their ideas (Pet. Ex. 46). The Kavanaugh Fellowship is designed to “assist them in moving research ideas from the lab to commercial development.” (Pet. Ex. 48). This program may enable an MIT graduate to develop a company based upon research conducted as a student (Tr. 448). Under the policy on intellectual property, MIT has an ownership interest in that idea and would be entitled to royalties (Pet. Ex. 4; Tr. 448). And, as pointed out above, RAs and Fellows in a given department are normally paid the same amount.

1. Alexandra Ferguson

Alexandra Ferguson is a sixth year Ph.D. student and an RA in the Brain and Cognitive Sciences Department, which is in the School of Science (Tr. 357; Er. Ex. 2). She conducts her research and works as an RA in the laboratory of Professor Mehrdad Jazayeri, who “studies how neurons and circuits generate dynamic patterns of activity that result in flexible goal-directed behavior (Tr. 357-58; Pet. Ex. 9). From her matriculation in fall 2017 through the summer of 2020, she was classified as a fellow (Tr. 357). She has been an RA since the Fall semester of 2020.

Before coming to MIT, Ms. Ferguson was enrolled in a 5-year combined bachelor’s and master’s degree program at Western Michigan University (Tr. 362). During her fifth year at Western Michigan, she applied for and was awarded the National Defense Science and Engineering Graduate Fellowship (“NDSEG”), which provides three years of funding (Tr. 363). The Defense Department pays the NDSEG stipend directly to the student, rather than to the university (Tr. 108). Because the amount of the NDSEG stipend falls short of the standards established by MIT, the University augmented the stipend with a second fellowship (Tr. 187, 369). Furthermore, the Brain and Cognitive Sciences Department rewards students who have obtained external funding with an extra \$1000 per year fellowship (Tr. 369; Pet. Ex. 10, 14). Ms. Ferguson used the first of her three years’ NDSEG fellowship while at Western Michigan and the remaining two years during her first two years at MIT (Tr. 363, 368-69). Thus, for her first two years at MIT, she had three fellowships: one from the Defense Department and two from MIT (Tr. 369).

The Brain and Cognitive Sciences Department requires first year students to participate in “rotations.” (Tr. 364) In rotations, students move through different labs before selecting one “to work in further” (Tr. 222). During her first rotation, Ms. Ferguson worked in Dr. Ed Guiden’s laboratory, which develops imaging tools to record the activity of neurons. She contributed to computer programs to model and interpret those images (Tr. 364-65). Her second rotation was to Dr. Jazayeri’s lab, where she studied human neural reactions in people performing tasks in response to a flashing light on a screen (Tr. 365-66). This tied in with Dr. Jazayeri’s interests in neural circuits and responses (Tr. 366). Finally, she worked in Dr. Michael Fee’s laboratory. He studies the relationship between breath and vocalization in songbirds, and she developed a device to modify a bird’s breath (Tr. 367-68). Thus, in each of her rotations, her work contributed to the research objectives of the laboratory.

Ms. Ferguson selected Dr. Jazayeri’s laboratory for her thesis research. In 2018-19, she continued her study of human reactions and also began working with two technicians in the laboratory to train monkeys that she would study for her thesis research (Tr. 372-73). The next year, in 2019-20, after using up her NDSEG grant, she was funded by a Hildenbrand Fellowship, a departmental grant (Tr. 373). She continued training the monkeys and preparing to record brain signals in the monkeys (Tr. 373). She also served as a teaching assistant in an undergraduate class while still being compensated as a fellow (Tr. 374).

In academic year 2020-21, Ms. Ferguson was awarded a Friends of McGovern Fellowship (Tr. 375). The email notifying her of the award reads, in part:

I am happy to congratulate you on your appointment as a friends of the McGovern Institute Student Fellow in Academic Year 220-2021. Your

fellowship (**paid as a 9-month RA**) will begin on September 1, 2020 and will end May 31, 2021.

Your fellowship has been made possible by the 120 or so annual supporters of the McGovern Institute – we call this group the ‘Friends of the McGovern.’ It’s always very inspiring to our supporter to know that their donations, whatever the size, make it possible for a graduate student to earn his or her PhD and do cutting-edge neuroscience research.

(Pet. Ex. 12) (emphasis added). The only impact of being paid as an RA was that income taxes were withheld from her pay. She continued with the same research in the same laboratory working for the same PI and to be paid at the same stipend level (Tr. 376)⁷.

The next year, academic year 2021-22, Ms. Ferguson received an RA appointment funded by one of Dr. Jazayeri’s grants (Tr. 379-80). Her work did not change. She continued to process the results of her monkey study and develop a computer model of their neural responses (Tr. 380). Whether as a fellow or as an RA, she was required to take a turn caring for the monkeys during weekends (Tr. 380-81). Her hours did not change when she went from being a Fellow to working as an RA (Tr. 380).

There are five other graduate students conducting research in Dr. Jazayeri’s laboratory (Pet. Ex. 13, pp. 3-4). All of them conduct research related to Dr. Jazayeri’s field. Dr. Jazayeri meets with the researchers in his lab weekly, one-on-one, to discuss the researcher’s projects. He holds weekly laboratory meetings where one researcher will make a presentation on research they have conducted or on journal articles about

⁷ The amount of the stipend increases each year for RAs, TAs and fellows in the department (Pet. Ex. 14; Tr. 370-71).

research in the field, and the others will offer feedback and suggestions (Tr. 384).

Graduate students participate in the same way, regardless of whether they are fellows or RAs (Tr. 384).

2. Benjamin James

Like Ms. Ferguson, Benjamin James has moved between an RA position and a Fellowship without any change in his work, hours or working conditions. He is enrolled in the Ph.D. program in the Electrical Engineering and Computer Science Department, in the School of Engineering. He is now in his fourth year (Tr. 479; Er. Ex. 2).

Before graduating with his Bachelor of Science degree from the University of Tulsa, Mr. James applied for and was awarded a National Science Foundation (“NSF”) Graduate Research Fellowship Program (“GRFP”) grant (Tr. 480; Er. Ex. 52). Like the NDSEG fellowship that Ms. Ferguson was awarded, the GRFP fellowship provides three years of funding, including a stipend for three years (Tr. 480-81). The funding can be used in any three years out of a five-year period (Tr. 217-18). Unlike the NDSEG grant, the GRFP funds are paid by the government to the University to support a student’s research (Tr. 401). Mr. James elected to defer this fellowship for two years because the department guaranteed funding for the first two years (Tr. 481-82).

Mr. James was awarded a departmental fellowship for the first year. During the first semester, he worked in Professor David Gifford’s lab, studying neuron development. In the second semester, he switched to Professor Manolis Kellis to study the non-coding elements of human genes (Tr. 482-83). In each semester, he performed work that contributed to the overall work of the laboratory (Tr. 482-83). For Dr. Kellis, he reviewed numerous data sources to help develop a mathematical model of these

non-coding segments of genes (Tr. 483). His research in this area was sufficiently valuable as to be included in a publication in the journal “Nature.” (Pet. Ex. 27)⁸ Dr. Kellis and Charles Boix, a graduate student in his lab, had originally submitted the article for publication in 2019, before Mr. James started working in the lab. During the peer review process, the reviewers pointed out some gaps in the research (Tr. 487). When Mr. James joined the laboratory as a fellow, he began doing the work that the peer reviewers had deemed to be missing. He continued that research into the fall of 2020, when he was appointed an RA (Tr. 487-88). His results made it possible to satisfy the reviewers and have the article accepted for publication. As a result, of the five authors listed as contributing to the research, Mr. Boix and Dr. Kellis decided that Mr. James was entitled to credit for making the second largest contribution to the research (Tr. 485, 487).

In the spring of 2021, after completing the analysis published in the Nature article, while still an RA, Mr. James began mathematical modeling of the progression of Alzheimer’s disease (Tr. 488-89). The following year, his third, he began using his GRFP fellowship (Tr. 490). Since the amount of the stipend fell short of MIT standards, he was appointed to an RAship during the fall 2021 and spring 2022 semesters, to cover the difference (Tr. 490-91; Pet. Ex. 35, 36). During the summer of 2022, he received the GRFP stipend with a departmental fellowship instead of an RA appointment as a supplement (Pet. Ex. 40, 42; Tr. 491, 499-500). In the current semester, he is again using his GRFP Fellowship supplemented by a departmental fellowship (Pet. Ex. 43, 44; Tr. 502-04).

⁸ Vice Chancellor Waitz characterized Nature as a “very well-regarded peer review journal.” (Tr. 254).

Thus, over his three plus years at MIT, Mr. James has been: a fellow for one year; an RA for one year; a GRFP fellow with an RA supplement for one year, and a GRFP fellow with a departmental fellowship this semester. None of these changes in funding has affected his work or his working conditions at all. He began his mathematical modeling of Alzheimer's disease progression in the spring of 2021, as an RA (Tr. 488-89). He has continued that research since then, through his time as a GRFP fellow supplemented by an RA appointment, into his current position as a GRFP fellow with a second fellowship (491, 492, 517). These changes in his appointments have not resulted in any changes to the hours he devotes to his research (Tr. 489, 492, 517). Dr. Kellis' lab has numerous group meetings to keep track of the research conducted in his lab. RAs and fellows participate in these meetings in the same fashion (Tr. 493-95). Another doctoral student in this lab, Na Sun, conducts similar research to Mr. James. She is classified as an RA (Tr. 495). In his current position as a fellow, Mr. James is frequently asked to perform work and assist on grants unrelated to his own Alzheimer's research (Tr. 504-513; Pet. Ex. 28, 29, 30, 33).

3. Daniel Shen

Daniel Shen is in his second year in the Ph.D. program in the Department of Electrical Engineering and Computer Science (Tr. 392-9). He, too, has a GRFP fellowship from the NSF (Tr. 393). As part of his application for this grant, he submitted a description of the research he intended to conduct (Tr. 398-99; Pet. Ex. 17). He was also required to enter into an agreement that his research would be supervised by a

Senior Research Scientist in the Department, Dr. Marija Ilic (Tr. 393-94; Pet. Ex. 16).⁹

After his admission to MIT, Dr. Ilic had reached out to him to encourage him to participate in her research because she felt his research plan would support her objectives (Pet. Ex. 18). To supervise his work, she meets with him weekly to discuss his work and plan future steps (Tr. 409).

Mr. Shen has been classified as a fellow for each of his years at MIT (Tr. 401). During his first year, he was funded by a departmental fellowship (Tr. 415-16). This year, he has begun using his GRFP grant, supplemented by an MIT fellowship (Tr. 401). He attends group meetings with other doctoral students, including RAs supervised by Dr. Ilic, to go over their work and provide feedback. He also performs work unrelated to his thesis for research projects in which Dr. Ilic participates (Tr. 401-08, 411-12; Pet. Ex. 19, 21,22).

4. Michele Peters

Michelle Peters is a fourth year Ph. D. student in the Biology Department within the School of Science (Tr. 460; Er. Ex. 2). She was classified as a fellow during the academic year 2019-20, her first year (Tr. 461). In the Biology Department, doctoral students take classes in the first semester before commencing their research. In the second semester, they do rotations before selecting a laboratory to conduct their thesis research. Ms. Peters' first rotation was in Dr. Gene-Wei LI's laboratory, where he studies ways in which bacteria regulate gene expression. She performed experiments

⁹ Throughout this segment of the transcript, Dr. Ilic's name is spelled by the court reporter as "Farijailic." The exhibits clearly show that her name is "Ilic." (Pet Ex. 16, 20) Therefore, Petitioner moves to amend the transcript at pages 393, 394, 399, 400, 402, 404, 406, 407, 408, 415 and 416 to reflect her correct name.

on bacterial strains that his lab studies (Tr. 461-62). Her second rotation was with Dr. Sebastian Lourido, who studies *Toxoplasma gondii*, a prevalent human parasite (Tr. 462-63). Because of the pandemic, she did this rotation remotely, performing data analysis of readings taken in the lab (Tr. 462-63). In her third rotation, she worked in Dr. Becky Lamason's lab, again remotely, developing a method to analyze images generated in that lab (Tr. 463-64). After concluding her rotation, she selected Dr. Lourido's laboratory for her research. She became an RA and has continued to work with another student with whom she worked during her rotation, studying the same class of proteins using the same techniques that she applied during her rotation (Tr. 463-64).

As the foregoing description illustrates, the work that Ms. Peters performed as a fellow during her rotations was in furtherance of the research being conducted in each of those labs. She also continued and built upon her rotation research when she became an RA. In addition, she received a very dramatic confirmation of the value of her work in Dr. Li's lab soon after she left. On March 13, 2020, she received an email from Dr. Li:

Last Friday we finally received reviews back for Grace and Jean's manuscript. The reviewers were mostly positive..., and we hope to submit a revision back to Nature soon. The experiments you did in your rotation are very well suited to answer some of their questions. We think it would be great to include them, and naturally to include you as co-author on the paper.

(Pet. Ex. 24). The article was published in Nature in August 2020, including the results of Ms. Peters' experiments and author credit for her contribution (Pet. Ex. 23; Tr. 465-67). Thus, even though she is conducting her thesis research in a different laboratory,

the research that she conducted during her rotation in Dr. Li's lab contributed to the advancement of knowledge.

D. Similarities and Differences Between Fellows and Research Assistants

As the foregoing demonstrates, there are a great many similarities between fellows and RAs. They are pursuing graduate degrees while conducting research. Their research forms the basis for or contributes to the thesis that the student must complete to earn the degree. RAs and Fellows work in the same labs under the direction of the same faculty members. They receive compensation in the form of tuition, health insurance and stipends. The stipends are the same for fellows and RAs. They perform the same duties, regardless of whether they are classified as RAs, fellows or both.

The Employer did establish that there are a few distinctions, none of which are relevant to employee status. The first difference, discussed above, is that stipend payments to fellows are treated differently under the tax laws from payments to RAs. This has no impact on the way they work, where they work, or how much they work. Indeed, despite the difference in tax treatment, the Employer pays them the same amount. And both RA and fellow stipends are subject to income taxes and exempt from social security and Medicare taxes.

Second, when RAs are funded by a particular grant requiring research on a particular question or subject, the research conducted by the RA must contribute to fulfilling the grant (Tr. 255). A fellow, on the other hand, has greater flexibility in the research that he or she pursues (Tr. 106-07, 259). This does not mean, however, that the fellow is not required to work. With the narrow exception of departments where first semester fellows only take classes, all fellows are expected to conduct research (Tr.

246). The fact that they have more flexibility in their jobs does not mean that it is not a job. As Dr. Waitz testified, “Research is a lot of hard work.” (Tr. 73)

The Employer also offered testimony that the hours worked by RAs are somehow different from the hours of fellows. The record establishes that an RA appointment is considered employment under the immigration laws, while a fellowship is not. Since foreign students are permitted to work a maximum of 20 hours per week, no more than 20 hours of the student’s research time can be charged to an RAship (Tr. 95-96, 138; Er. Ex. 11). Of course, a graduate student will spend much more than 20 hours per week conducting research (Tr. 427-28; Er. Ex. 11). The 20 hours charged to an RAship is a matter of how the time is accounted for in University records, not the amount of time spent on research (Tr. 428).

Finally, the Employer introduced documents containing information about numerous fellowship programs (Er. Ex. 32 – 49). Unlike a research grant awarded to a PI, fellowships do not require that a student produce a particular research product. However, most fellowship grants do require research in a given field. All require some form of research. MIT classifies as fellows students who are funded from NIH Training Grants, which require that the fellow be trained within a formalized program (Tr. 291; Er. Ex. 40). Only one Fellowship Program, the Kavanaugh Transitional Fellows program, requires that fellows be relieved of lab duties when participating in the program (Er. Ex. 54). This fellowship, however, is not designed to support students in their academic pursuits. Rather, it is intended to assist scholars in commercializing their ideas, and this fellowship is frequently awarded to postdocs who have completed their Ph.D. (Pet. Ex. 46, 48, 49, 50). Kavanaugh Fellows are released from their laboratory duties, not for

academic reasons, but to enable them to monetize the ideas that they developed at MIT.

E. Fellowships at the Sloan School of Business

Graduate Programs within MIT's Sloan School of Management include MBA, Executive MBA, SFMBA, Master of Finance, Master of Business Analytics, Leaders for Global Operations (LGO), and a PhD Program. (Tr. 332). The Sloan School hosts 1690 graduate students. (Er. Ex. 5). Of these, only the Ph.D. Program and the LGO program, have thesis requirements which entail original research (Tr. 332).

Graduate students in the Sloan School receive funding from MIT across what it describes as "job classifications," – Research Assistantships (RAs), Teaching Assistantships (TAs) and Fellowships. (MIT Ex. 15). Appointments and awards are treated interchangeably by MIT in virtually all schools, and this is no different in the Sloan School. (Tr. 171, 13-25; Tr. 188; Tr. 331, 4-13). Yearly funding for graduate students in the Sloan School, regardless of program, includes health insurance valued at \$3,269, a stipend valued at \$50,100, and tuition payments. (MIT Ex. 50; Tr. 340-41).

Students in the two programs which require original research have specific work requirements. In the PhD program, students are expected to work three out of fifteen semesters during their third, fourth and fifth years. (Tr. 333). Students must work as either an RA or a TA, and during this time, the bulk of their funding comes in the "job classification" of fellowship. (Tr. 334, 1-9). Should students have problems finding work as an RA or TA in the "free-market" of available positions, the Sloan School provides a job-posting for these positions. (Tr. 335, 18-25). There are about one hundred students in the PhD program. (Tr. 332).

During this time, PhD students also typically work on their theses, another requirement for graduation. (Tr. 334, 10-23). The thesis requirement includes an obligation to conduct original research for the benefit of MIT. (Tr. 332-33). Thus, funding is conditioned on PhD students performing services for MIT in the form of TA and RA services and conducting original research for their thesis. (Tr. 341).

In the LGO program, the work requirement includes a six-month internship with a private company, funded by MIT, which must result in a thesis. Most LGO students receive a tuition fellowship. (Tr. 343). During the internship, students also receive “an allowance for travel and/or relocation that is paid out by fellowship.” (Tr. 343) This funding for the internship “can be either a stipend or tuition support[,]” (Tr. 343).

Students in these programs with RA or TA jobs often are assigned jobs that are unrelated to their thesis studies. Thus, in contrast to the other schools at MIT, there appears to be more of a distinction between the work performed by RAs and the research conducted by a fellow. The essential facts, however, remain the same as for other fellows. Even in the Sloan school, fellows must conduct research in order to obtain their fellowship funding. That research contributes to the mission of MIT to advance knowledge. Therefore, they have an employment relationship with the University.

IV. ARGUMENT

A. Fellows are Statutory Employees under *Columbia*

The Board in *Columbia* framed the issue presented: “The threshold question before us is whether students who perform services at a university in connection with their studies are statutory employees within the meaning of 2(3) of the National Labor

Relations Act.” 364 NLRB 1080 at 1080. The Board answered in the affirmative. Like the research assistants at issue in *Columbia*, the fellows at MIT conduct research in connection with their studies. This research fulfills the mission of MIT to advance human knowledge. In furtherance of its mission to disseminate knowledge, MIT makes public the theses produced by graduate students, including fellows. MIT owns any intellectual property resulting from this research (Pet. Ex. 4). By conducting research, fellows are “performing services” for MIT.

The Board held in *Columbia* that students who have a common law employment relationship with the college or university they attend are employees within the meaning of sec. 2(3) of the NLRA. The Board defined this relationship: “We believe ... that student assistants who perform work at the direction of their university for which they are compensated are statutory employees.” 364 NLRB at 1082-83. That is, a student is an employee if three conditions are met: 1) the student must perform work; 2) the work must be directed by the university; and 3) they must be compensated for the work. All three conditions are met in this case.

Fellows are performing **work** when they conduct research. As discussed above, they fulfill the mission of the University by producing original research to advance knowledge. Dr. Waitz repeatedly characterized this research as “work.” When deciding whether to invite a prospective student to a particular lab, a faculty member considers whether the applicant is “interested in coming to **work** here and we would like to **work** with him.” (Tr. 63). “It’s a lot of work to be a graduate student in any institution.” (Tr. 76). And, ““Research is a lot of hard work.” (Tr. 73)

The Employer emphasizes that the research work conducted by fellows is “academic” work to complete their thesis and earn their doctoral degree. It is undisputable that conducting original research and writing a thesis is part of the academic program. This is not inconsistent with finding fellows to be employees under the Act. *Columbia* squarely rejected the argument that work performed by a student to obtain a degree could not also be the basis for an employment relationship:

The premise of Columbia’s argument concerning the status of its research assistants is that because their work simultaneously serves both their own education interests along with the interests of the university, they are not employees under *Leland Stanford* [214 NLRB 621 (1974)]. To the extent that Columbia’s characterization of *Leland Stanford* is correct, we have now overruled that decision. We have rejected an inquiry into whether an employment relationship is secondary to or coextensive with an education relationship. For this reason, the fact that a research assistant’s work might advance his own educational interests as well as the University’s interests is not a barrier to finding statutory-employee status.

364 NLRB at 1096. Because the fellow’s work furthers the research interests of the University, it is irrelevant that this work also contributes to the student’s academic progress. Fellows produce a product, original research, to fulfill the mission of MIT. That product is owned by MIT and that is made available to the public by MIT. Therefore, the fellows perform work for MIT.

The record establishes that fellows are **directed** and **supervised** by the University as they conduct their research. Some fellows, like Shen, have written agreements with a faculty member to supervise their work. Faculty members recruit graduate students to work in their labs because of the contribution that the students can make to the work of the lab (Pet. Ex. 18). The student employee witnesses testified that their PIs meet with them regularly, usually weekly, to go over their work, and that the

labs run regular meetings at which the people working in the lab describe the progress of their work and obtain feedback. Dr. Waitz testified that all graduate students “work under the guidance and mentorship of faculty and senior research staff throughout the course of their thesis.” (Tr. 73-74) He even used the word “supervisor” to describe this relationship (Tr. 146). While the Employer can be expected to argue that this “guidance” and “mentorship” constitutes academic supervision, this argument incorporates the false distinction between learning and working rejected in *Columbia*. Mentoring and providing guidance is part of a healthy supervisor-employee relationship. The work of fellows is supervised in exactly the same manner as the work of RAs whom the Employer admits are employees.

Finally, the fellows are **compensated** for their work. Their tuition is covered, and MIT pays a stipend and provides health insurance. The Employer pays fellows from the same bank account through the same portal as admitted employees such as RAs and TAs (Pet. Ex. 5-8). The Employer’s records describe these payments as “salaries.” (E.g., Pet. Ex. 6, p. 2: “Salary payments are issued semimonthly....”). In most if not all departments, salary payments to fellows are in the same amount as salary payments to RAs. The Employer determines the level of salary payments based on two factors: the cost of living in the Boston area and the market rate among other elite institutions for students with the skills and credentials in the field. These are factors typically relied upon by employers setting rates of pay for employees.

The Employer argues that stipend payments to fellows are conditioned only upon the recipient’s academic progress. Once again, this argument is based upon the false dichotomy between an employment relationship and an academic relationship rejected

by the Board in *Columbia*. For fellows, academic progress means conducting research, and research is work.¹⁰ The Employer will also point out that stipend payments to fellows are not subject to income tax withholding and that fellows are not subject to I-9 requirements. The question in this case, however, is whether fellows are “employees” within the meaning of sec. 2(3) of the NLRA, not within the meaning of some other statute with different language, policies and objectives. *Columbia*, 364 NLRB at 1084, fn. 49. Moreover, the IRS does treat the payments to fellows as income.¹¹

The Employer contends that the Board has no jurisdiction over students and that fellows are indistinguishable from students who fund their own educations without any financial assistance from MIT. It is true that the Board has no jurisdiction over students per se. But there is a critical distinction between fellows and students who fund their own education: MIT pays money to fellows. This is one of the essential criteria to establish employee status – employees are paid by their employer. Fellows are paid by MIT; self-funded students are not. Both are students, but only the fellows are also employees over whom the Board has jurisdiction.

The artificiality of the distinction between payments to fellows and payments to RAs is starkly illustrated by the Friends of the McGovern Institute Student Fellowship awarded to Ms. Ferguson. The announcement from the neuroscience department states, “Your fellowship (paid as a 9-month RA) will begin on September 1, 2020....” (Pet. Ex. 12). No explanation is provided for treating this fellowship as an RA appointment. No explanation is needed, because everyone involved understands that

¹⁰ The Petitioner has agreed that fellows who have not begun to conduct research, and whose academic progress depends only on attending classes, are not employees.

¹¹ In this regard, RAs and TAs are also treated differently from most other employees for tax purposes, as they are not subject to social security and Medicare taxes.

the distinction between the two has nothing to do with the nature of the work performed. Ms. Ferguson also worked as a TA during two semesters while being compensated as a fellow (Tr. 374-375). As a TA, she conducted weekly recitation sessions, held office hours, and graded exams (Ibid). These are the duties of a Teaching Assistant as described on the Employer's website (E.g., Er Ex. 16, 1st page, last paragraph). Dr. Waitz acknowledged that students performing TA duties may be paid as fellows if they are "fulfilling the academic requirement to get teaching experience." (Tr. 290). He contends that they were not employees, even though they were paid by MIT to help teach classes, because teaching is necessary to earn their degrees. This argument was squarely rejected in Columbia. "[T]he fact that teaching may be a degree requirement in many academic programs does not diminish the importance of having students assist in the business of universities by providing instructional services for which undergraduate students pay tuition." 364 NLRB at 1095.

B. For Statutory Purposes, there is no Relevant Difference between RAs and Fellows

The question of whether graduate students are employees does not turn on whether MIT chooses to give them an appointment as an RA or a TA rather than as a fellow. The question turns on whether the student is performing services for MIT and receiving compensation for doing so. Fellows who conduct research or assist in teaching classes are performing services for MIT and are being paid for it. Therefore, they are statutory employees.

Graduate students frequently move between RA and fellow positions. Often, they have simultaneous appointments as fellows and RAs. When they hold simultaneous appointments, there is no way to distinguish between the time spent as an

RA and time spend as a fellow. The fact that graduate students at Columbia often received funds from research and training grants simultaneously was cited by the Board as a factor indicating that students funded by training grants were employees. 364 NLRB at 1097. Graduate students at MIT switching between RA and fellowship appointments does not change their supervision, the hours worked or the nature of the research or other work that they perform.¹² They conduct research under the supervision of a faculty members and are paid for it. There is nothing in *Columbia* that would support an argument that employee status depends upon the source of the funds used to pay them. At MIT, that is the only distinction between fellows and RAs.

The Employer argues that fellows have more flexibility in the research that they conduct because their funding is not tied to a particular faculty member's grant. This is particularly true with respect to students who come to MIT having been awarded grants to pursue research. That fellows are not tied to a particular research project does not mean that they are not employees. On the contrary, a fellow who has been awarded a grant has performed a task similar to a faculty member who has applied for and been awarded grants to fund research. The fellow, like the faculty member, has submitted a grant application describing research to be conducted and obtained funds for the university to support that research. That externally funded grants obtained by PIs bring money into the University to help the University conduct more research, which makes the faculty members more valuable to the University. Similarly, graduate students who

¹² Waitz claimed that RAs can be distinguished from fellows in that RAs are required to perform duties unrelated to their thesis research, such as maintaining lab equipment. However, he admitted that fellows, like RAs take responsibility for such tasks as maintaining lab equipment (Tr. 274). The testimony of Ferguson (Tr. 380-81), Shen (Tr. 401-408, 411-12; Pet. Ex. 19, 21, 22) and James (Tr. 504-513; Pet. Ex. 28, 29, 30, 33) all included examples of tasks that they perform for the research group unrelated to their own thesis research.

come to MIT with their own fellowships are more valuable to the University. This is reflected in the fact that some departments pay them extra as a reward for bringing in money. Like a PI with a grant, a fellow with a federal grant that is paid to the University is bringing money into the MIT to be used to support research, and MIT pays the fellow out of the grant funds.

Assuming, *arguendo*, that fellows do have greater flexibility in the research that they conduct, this does not mean that the research is not **work**. It just means that the fellows may have more say over what jobs they must do. It is common for a highly skilled and valued employee to have greater say in what jobs he or she is assigned. Employees under collective bargaining agreement may select job assignments based upon seniority. The fact that some employees have greater say over what jobs they are required to perform is irrelevant to whether they are employees.

Moreover, the frequency with which doctoral students move between RA and fellow positions without any change in duties or working conditions demonstrates the artificiality of the distinction. Indeed, more than 300 graduate students who were included in the unit in Case No. 01-RC-289,879 as RAs have been reclassified as solely fellows who the Employer claims are no longer employees (Pet. Ex. 15). The testimony of Ferguson, Shen, Peters and James shows that these changes in classification do not result in any changes in work or working conditions. Indeed, Benjamin James is one of the students who was classified as an RA and eligible to vote in the Spring who is now classified only as a fellow (Pet. Ex. 15, 4th page). The only change is that in the Spring, he was receiving a GRFP fellowship supplemented by an RA appointment, while now his GRFP is supplemented by a second fellowship (Tr. 4909-91, 499-500; Pet. Ex. 39,

44). This provides a clear illustration that the distinction between a fellow and an RA is entirely artificial and does not provide a basis to exclude anyone from the protections of the Act.

C. The Board in *Columbia* Rejected the Argument that Employment Status turns on the Type of Appointment or Source of Funding

The Employer contends that *Columbia* is not controlling with respect to fellows because they do not conduct research tied to a particular PI's grant. The Employer's counsel quoted a line from that decision that referred to fellowships at Columbia as funding that did not include a work requirement and was therefore financial aid (Tr. 31, citing 364 NLRB 1094). The *Columbia* decision does not include a discussion of what, if any, conditions were placed on these fellowships. Whatever the circumstances of those fellowships at Columbia, the record here is clear that students receiving fellowships at MIT must perform research work to receive those payments.

Columbia does include a discussion of the terms of sponsored research grants that funded many of the research assistants at issue. 364 NLRB at 1093. The Board discussed the benefits that accrued to Columbia from work by research assistants on sponsored grants to show that those research assistants perform services for Columbia. 364 NLRB at 1096. The holding of *Columbia* that students who are paid by an institution to conduct research are statutory employees is not limited to students conducting research funded by such grants. Indeed, the Board made specific findings regarding two groups of employees that the Employer classifies as fellows.

The Employer classifies graduate students paid from funds budgeted to a department as fellows. The Board in *Columbia* found employees paid out of funds budgeted to a department to be employees within the meaning of the Act. The

petitioned-for unit included “Departmental Research Assistants [who] . . . are Master’s degree students and are appointed and funded by the University and provide research assistance to a particular department or school within the University.” 364 NLRB at 1093. The Board found all the petitioned for employees, including these Departmental Research Assistants, to be employees. 364 NLRB at 1092. That is, the Board in *Columbia* found that graduate students who conducted research and were paid from departmental budgets were statutory employees. Thus, the Board’s finding that students who are paid to conduct research are employees is not limited to students funded by sponsored research grants. The finding includes students funded by departmental or institutional funds. This is controlling precedent with respect to the fellows at MIT who conduct research and are funded by departmental or University funds.

The Employer also classifies graduate students who are funded by NIH Training Grants as fellows (Tr. 177, 291; Er. Ex. 39, 40). Students funded by these grants must be trained within a formal program (Tr. 291). The Board explicitly found that students at Columbia who conducted research and were paid from NIH training grants are employees.

Columbia argues that, even if research assistants generally are common-law employees the research assistants funded by a specific form of grants known as *training grants* present unique circumstances and lack the characteristics of common-law employment. However, the record shows that Columbia receives revenue from these training grants, is charged with ensuring that research assistants thereunder receive appropriate training within a formalized program (consistent with the funder’s goal of having a well-trained work force in biomedical and behavioral research), and accordingly it oversees and directs the research assistants who receive the grants. . . . Further, participation in specific training activities is a requirement for receipt of training grants; thus,

notwithstanding the grantor's statement that the grant aid is not salary, it is a form of compensation.

364 NLRB at 1097. Those findings are controlling with respect to fellows funded by training grants in this case.

The Board's findings with respect to Departmental Research Assistants and Research Assistants funded by training grants are squarely on point with respect to MIT fellows funded from departmental funds and fellows funded by training grants. The only distinction between Columbia and MIT is that the former classified these students as research assistants while MIT calls them fellows. More generally, the Board's findings with respect to these two groups establishes that employee status does not depend upon the source of the funding from which a university pays its students. This is confirmed by the Board's heavy reliance on *Boston Medical Center*, 330 NLRB 152 (1999), cited in *Columbia* at 1081-82, 1090, 1099. In *Boston Medical*, the Board held that interns, residents and fellows (collectively referred to as "house staff") at a teaching hospital were employees even though they were also students. As in *Columbia*, the Board found that, while pursuing their medical training, the house staff were paid for providing services to the Employer, under the direction of the medical faculty. Funding for the payments to the house staff came, at least in part, from Medicare payments intended for medical education. 330 NLRB at 153. The Board concluded that house staff were paid for the services, even though the payments came from funds intended for educational purposes.

D. Fellows on Rotation are Employees

While the Employer did not raise this point during the hearing, it may argue that fellows during rotations are different from other fellows because they are still in the

process of selecting an area to conduct research. This argument will lack merit if it is made. Fellows on rotation meet all of the criteria for employee status under *Columbia*. They conduct research to further knowledge. They may not be as skilled at conducting research as more senior graduate students, but that is naturally the case for new employees. As they conduct more research, they get better at their jobs. They work under the direction of a faculty member, and they are paid like other fellows and RAs. Thus, they meet the criteria established in *Columbia* to find a student to also be an employee.

The examples of Benjamin James and Michelle Peters show that fellows on rotation can and do produce valuable research. Each produced research worthy of publication in a highly regarded scientific journal (Pet. Ex. 23, 27). Peters' research made it possible for an article to be published even though she did the work in a laboratory that she did not ultimately choose for her thesis research. James' contribution was such that he was listed as making the second greatest contribution to the research. Thus, the record clearly establishes that, even during rotations, fellows perform work that contributes to MIT's mission of advancing knowledge.

E. Fellows at the Sloan School of Business are Employees

Mr. DeMaio's testimony suggests that, at the Sloan School of Business, there is more of a distinction between the work of RAs and the work of fellows. RAs at Sloan are much more likely than RAs at the other schools to perform research unrelated to their theses. The fact remains, however, that fellows at Sloan, like fellows at other schools, must work on their theses to earn their fellowships. This means that they must do research in order to collect their stipends. Like other fellows, they are paid to further

the mission of the University. Therefore, the fellows at Sloan are also employees and should be included in the Unit.

V. **CONCLUSION**

Fellows at MIT are employees under the holding of *Columbia*. They meet the common law definition adopted by the Board in that case. Fellows perform research work for MIT, under the direction of MIT faculty, and receive compensation for performing that work. The relationship of an RA with the University is indistinguishable from the relationship of a fellow with MIT. The Board in *Columbia* rejected arguments that employee status for students conducting research turns on the source of funding for that research. Therefore, *Columbia* is controlling and fellows are entitled to the rights of employees under the Act.

Accordingly, the Regional Director should direct an election among the fellows, to vote on whether to be added the existing unit represented by the UE consisting of graduate students who are employed to provide instructional and research services.

RESPECTFULLY SUBMITTED,

PETITIONER, UNITED ELECTRICAL,
RADIO & MACHINE WORKERS OF
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