

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

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THE NEW SCHOOL,

Employer,

- and

Case No. 2-RC-143009

STUDENT EMPLOYEES AT  
THE NEW SCHOOL-SENS, UAW,

Petitioner.  
-----X

TO: Mr. Gary Shinnars  
Executive Secretary  
National Labor Relations Board  
1099 14th Street NW  
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**REQUEST FOR PERMISSION TO FILE A BRIEF *AMICI CURIAE***

On behalf of the American Council On Education (“ACE”), the Association of American Medical Colleges (“AAMC”), the Association of American Universities (“AAU”), the Association of Jesuit Colleges and Universities (“AJCU”), the College and University Professional Association for Human Resources (“CUPA-HR”), and the National Association of Independent Colleges and Universities (“NAICU”), we respectfully request permission to file an *amici curiae* brief in the above-captioned matter.

ACE is a non-profit, national educational association that represents all sectors of American higher education. Its approximately 1,700 members reflect

the extraordinary breadth and contributions of degree-granting colleges and universities in the United States. Founded in 1918, ACE seeks to promote high standards in higher education, believing that a strong higher education system is the cornerstone of a democratic society. ACE participates as an *amicus curiae* only on those rare occasions, such as this, where an issue presents matters of substantial importance to higher education in the United States.

AAMC is a non-profit association representing all 145 accredited U.S. medical schools, nearly 400 major teaching hospitals and health systems, and more than 80 academic societies. Founded in 1876, the AAMC provides national leadership in medical education, research and health care. Of particular relevance to this case, the AAMC provides an ongoing forum of leadership in biomedical science research training units to promote quality in the graduate programs of accredited medical schools in the United States.

AAU is an association of 62 leading public and private research universities in the United States and Canada. Founded in 1900 to advance the international standing of U.S. research universities, AAU today focuses on issues that are important to research-intensive universities, such as funding for research, research policy issues, and graduate and undergraduate education. The 60 AAU universities in the United States award more than one-half of all U.S. doctoral degrees and 55 percent of those in the sciences and engineering.

AJCU represents all 28 Jesuit institutions in the U.S. and is affiliated with over 100 Jesuit institutions worldwide. The first Jesuit institution opened in 1548 in Messina, Sicily, and Jesuit institutions remain committed to academic rigor, with a focus on quality teaching, learning, and research to educate the whole person.

CUPA-HR, the voice of human resources in higher education, represents more than 19,000 human-resources professionals at over 1,900 colleges and universities. Its membership includes 91 percent of all United States doctoral institutions, 77 percent of all master's institutions, 57 percent of all bachelor's institutions, and 600 two-year and specialized institutions.

With more than 1,000 member institutions and associations, NAICU serves as the unified national voice of independent higher education, reflecting the diversity of private, nonprofit higher education in the United States. NAICU's 964 member institutions, which reflect the diversity of private, nonprofit higher education in the United States, include major research universities, church-related colleges, historically black colleges, art and design colleges, traditional liberal arts and science institutions, women's colleges, two-year colleges, and schools of law, medicine, engineering, business, and other professions.

The *amici* respectfully request that the National Labor Relations Board ("NLRB") grants the instant request and accepts this brief for consideration

because the issues raised in the above-captioned matter are of paramount importance to higher education in the United States, and therefore, are of significant interest to the *amici* and their member institutions.

In asking the NLRB to reconsider *Brown University*, 342 NLRB 483 (2004) (“*Brown*”), and to revisit *Leland Stanford Junior University*, 214 NLRB 621 (1974) (“*Leland Stanford*”), Petitioner Student Employees at The New School-SENS, UAW seeks to undo decades of well-reasoned and settled NLRB precedent and policy. A decision by the NLRB to overturn *Brown* and *Leland Stanford*, particularly on the record before it, will unsettle fundamental relationships in higher education in the U.S. and adversely impact the ways in which universities address basic issues in graduate student education, including financial aid, degree requirements, curriculum content and related matters. In addition, a reversal of either *Brown* or *Leland Stanford* impermissibly will intrude upon academic freedom and the relationship between university professors and their students, with implications that are both extensive and far reaching.

Dated: New York, New York  
December 16, 2015

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Marshall B. Babson", written over a horizontal line.

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COLLEGES, THE ASSOCIATION OF AMERICAN UNIVERSITIES, THE  
ASSOCIATION OF JESUIT COLLEGES AND UNIVERSITIES, THE  
COLLEGE AND UNIVERSITY PROFESSIONAL ASSOCIATION FOR  
HUMAN RESOURCES AND THE NATIONAL ASSOCIATION OF  
INDEPENDENT COLLEGES AND UNIVERSITIES**

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## **INTEREST OF *AMICI CURIAE***

The American Council on Education (“ACE”) is a non-profit, national educational association that represents all sectors of American higher education. Its approximately 1,700 members reflect the extraordinary breadth and contributions of degree-granting colleges and universities in the United States. Founded in 1918, ACE seeks to promote high standards in higher education, believing that a strong higher education system is the cornerstone of a democratic society. ACE participates as an *amicus curiae* only on those rare occasions, such as this, where an issue presents matters of substantial importance to higher education in the United States.

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In asking the National Labor Relations Board ("NLRB" or "Board") to reconsider *Brown University*, 342 NLRB 483 (2004) ("*Brown*"), Petitioner Student Employees at The New School-SENS, UAW ("Petitioner") seeks to contravene decades of well-reasoned and settled Board precedent and policy. A reversal by the NLRB of its decision in *Brown* and a repudiation of the principles underlying *Leland Stanford Junior University*, 214 NLRB 621 (1974) ("*Leland Stanford*") and *New York University*, 332 NLRB 1205 (2000) ("*NYU P*") with respect to research assistants, will have deleterious implications that are both extensive and far reaching. Such a reversal will adversely impact fundamental, core aspects of the manner in which higher education institutions across the country structure and deliver graduate education. It will intrude unnecessarily upon academic freedom and the relationship among our nation's universities, professors and their graduate students.

## SUMMARY OF ARGUMENT

Petitioner asks the Board to stray from its statutory mandate by reversing its decision in *Brown* with respect to graduate students who as part of their academic program assist faculty in the teaching of courses and to implicitly overrule *Leland Stanford* and *NYU I*, with respect to graduate students who are also research assistants. Petitioner's unabashed purpose is to extend its reach by intruding collective bargaining as broadly as possible into academic matters at the expense of the student-teacher relationship at the penultimate level of higher education in the United States.

Echoing the dissent in *Brown*, Petitioner argues that *Brown* represents a distinct departure from existing Board precedent and is inconsistent with the language of the National Labor Relations Act (the "Act" or "NLRA") and Supreme Court precedent. In advancing this argument, Petitioner offers a wholesale misinterpretation of the relevant authority, as until *NYU I*, the Board maintained an unbroken policy, consistent with the Act, of denying collective bargaining rights to graduate students. The Board in *Brown*, and cases relied on therein, recognized that the "academic reality" for graduate students has not materially changed and emphasized the importance of the university's academic freedom to make decisions affecting the relationship between students and faculty. This freedom of the university and its faculty includes the right to evaluate students, determine

admission and matriculation standards, tuition, enrollment levels, eligibility for and issuance of award scholarships and grants, and all aspects of the educational curriculum, including what courses will be offered, to whom and by whom courses will be taught, and the teaching methods to be used. *See Brown*, 342 NLRB at 492 (“the broad power to bargain over all Section 8(d) subjects would, in the case of graduate student assistants, carry with it the power to intrude into areas that are at the heart of the educational process.”).

The student-faculty relationship is not a static one: progress in demonstrating a mastery of subject areas must be guided and monitored, and ultimately, a degree awarded based on academic, not labor standards. Teaching assignments and research positions provide exposure to members of an institution’s community of scholars and learners, other disciplines (often crossing disciplines) and experiences which are integral to and characterize doctoral education in the United States. These are quintessentially academic concerns. An improvident exercise of the NLRB’s jurisdiction over these matters would inevitably harm the university’s core educational mission and cause irreparable damage to the student-teacher relationship.

In recognition of this, the Supreme Court and the NLRB have repeatedly recognized that the nature of the university “does not square with the traditional authority structures with which th[e] Act was designed to cope in the typical