

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

THE NEW SCHOOL,

Employer,

and

STUDENT EMPLOYEES AT THE NEW
SCHOOL - SENS AUW,

Petitioner.

Case No. 2-RC-143009

The above-entitled matter came on for hearing pursuant to Notice, before GREGORY B. DAVIS, Hearing Officer, at the Jacob Javits Federal Building, 26 Federal Plaza, New York, New York on Thursday, April 23, 2015, at 9:30 a.m.

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25

<u>1</u>		<u>I N D E X</u>				<u>VOIR</u>
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
2	Stephanie Basta	141	--	--	--	150
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1	<u>E X H I B I T S</u> (continued)		
2	<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
3	EMPLOYER'S		
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5	E-9	152	153
6	E-10	152	153
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E X H I B I T S (continued)

2	<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
3	E-29	195	196
4	E-30	203	204
5	E-31	207	208
6	E-32	210	211
7	E-33	212	--
8	E-34	215	216
9	E-35	218	220
10	E-36	218	220
11	PETITIONER'S		
12	P-14	171	173
13			

1 a law degree from George Washington University.

2 Q Okay. And briefly speaking, before you joined The New
3 School, what was your employment history?

4 A I was an associate at Proskauer Rose, in the beginning of
5 my career, and then I was associate counsel for the
6 Metropolitan Museum of Art. I then worked with a number of
7 non-profits for a few years, before joining The New School.

8 Q Okay. Now, in your current position, can you tell the
9 Hearing Officer and counsel what generally speaking your duties
10 involve?

11 A I work at a senior level in the human resources
12 department. My focus is on our relationships with unions and
13 in administering the collective bargaining agreements.

14 Q Okay. And do you have some role, irrespective of its
15 strength or how much it is, with non-union employees, as well?

16 A I do. I -- in the senior role that I play in the
17 department, I administer other policies, and I work directly
18 with the AVP and the Senior VP for HR on various matters,
19 including non-union issues.

20 Q Okay. Now, are you involved in collective bargaining?

21 A Yes.

22 Q Okay. And in that regard, do you have a role in
23 negotiating collective bargaining agreements, *in toto* or in
24 part?

25 A Yes.

1 Q Can you tell me -- tell the Hearing Officer what that role
2 might be?

3 A I help prepare for negotiations, determining what goals
4 the University seeks to attain through negotiations. I sit in
5 on the collective bargaining. I work with the University's
6 management committee on bargaining. I will also meet with the
7 union leadership at times related to bargaining. So I would
8 say I handle all aspects of bargaining with our counsel's
9 office, and with our Senior VP for HR.

10 Q And in addition to negotiating contracts, in whole or in
11 part, do you have a role with administering those agreements?

12 A Yes. I have --

13 Q Okay. And what is that?

14 A I -- it's my responsibility to make sure that the
15 University is following the agreement. And that all procedures
16 and processes are in place so that the University can do that.

17 Q Okay. Now, before we get to the faculty, please advise
18 the Hearing Officer whether there are unionized employees who
19 do not have a faculty role?

20 A Yes, there are.

21 Q Okay. And how many collective bargaining units,
22 approximately, and we'll go through them, are there that The
23 New School enters into or engages in collective bargaining?

24 A Including faculty, off the top of my head there are, I
25 think, five or six.

1 Q Okay.

2 MR. CATALANO: Now, with respect to that, the court
3 reporter has been kind enough to pre-mark certain documents.
4 And if you wouldn't mind, I have provided copy -- copies and
5 the names to the Hearing Officer. And Mr. Meiklejohn and
6 Nichole have received these previously.

7 So what I would like you to do is not only refer to the
8 document, but show it to counsel, because I'm not -- they have
9 them in their offices. I'm not sure whether they brought them
10 with them.

11 MS. ROTHGEB: I think we have some, but we don't have --
12 Can we go off the record?

13 HEARING OFFICER DAVIS: Sure, we'll go off the record.

14 (Whereupon, a brief recess was taken.)

15 HEARING OFFICER DAVIS: On the record.

16 DIRECT EXAMINATION (continued)

17 BY MR. CATALANO:

18 Q Okay, now, I don't want to first dwell on the non-union --
19 excuse me, the faculty contracts. Go to the first set or first
20 document that is in front of you, which is a non-faculty
21 collective bargaining agreement.

22 A The first document is --

23 COURT REPORTER: That is E-8.

24 MR. CATALANO: I know that. But aren't -- did you mark
25 the others, as well?

1 COURT REPORTER: All of them.

2 MR. CATALANO: Okay.

3 BY MR. CATALANO:

4 Q So go to the first one that is not a union -- a faculty
5 contract. Thank you.

6 Okay, and can you refer to the exhibit number, please?

7 A Exhibit 11.

8 (Employer's E-11 marked.)

9 BY MR. CATALANO:

10 Q Okay, and can you tell the Hearing Officer and counsel
11 what that document represents?

12 A This is the University's collective bargaining agreement
13 with Local 1205 Teamsters.

14 Q Okay. And what unit of employees does it represent?

15 A Clerical employees and librarians.

16 Q Okay. And is that in its current form currently in place?

17 A Yes.

18 Q Okay.

19 MR. CATALANO: I offer it.

20 MR. MEIKLEJOHN: I would object on the grounds of
21 relevance.

22 HEARING OFFICER DAVIS: What's the relevance?

23 MR. CATALANO: The relevance is much more precise than
24 entering into collective bargaining units from public
25 universities having nothing to do with The New School. These

1 are employees of The New School, private employment at The New
2 School, who happen not to be students.

3 The New School recognizes the difference between employees
4 and graduate students. And we have entered into any number of
5 collective bargaining agreements with unions pertaining to the
6 terms and conditions of employment of employees employed by The
7 New School who are not graduate students.

8 We know the model. We understand the terms and conditions
9 of the National Labor Relations -- the statutory scheme. And
10 we have engaged within it. At the same time, we recognize and
11 we take the position and the intent has always been that The
12 New School or at The New School, that graduate students are not
13 employees. So these documents, to the extent Mr. Meiklejohn
14 could possibly have an objection, are tremendously more
15 relevant than any probative value that the collective
16 bargaining agreements pertaining to public universities under
17 different statutory schemes could possibly have in this
18 proceeding.

19 MR. MEIKLEJOHN: May I?

20 HEARING OFFICER DAVIS: No. We're not going to have a
21 debate. But certainly, with respect to the documents that are
22 already admitted, as I stated before, they were referred to by
23 the Board in *Brown University*, and therefore, for whatever
24 weight the reader of the record wants to give them, they were
25 admitted.

1 Now, I'm -- what are the numbers 8 -- oh, you're only
2 offering this one at this time?

3 MR. CATALANO: There are approximately four or five. Ms.
4 Basta can give you them, denote for the record what they relate
5 to. I'll offer them all. There won't be any testimony about
6 them. The proffer has already been made as to the relevance.

7 And then there are also -- is a series of faculty
8 contracts, seriatim; there's only one pertaining to the part-
9 time faculty, that we will additionally put into evidence with
10 the Hearing Officer's acquiescence.

11 HEARING OFFICER DAVIS: Okay.

12 MR. CATALANO: And that will be the scope of this
13 testimony.

14 HEARING OFFICER DAVIS: I started to cut you off, and I
15 don't really want to do that, but -- so I'm willing to hear you
16 at this time.

17 MR. MEIKLEJOHN: All right, I'm sorry. But I will try to
18 keep it to the point. I think the documents, what they go to,
19 is a lack of community of interest between the clerical
20 employees and the other groups of employees, and the group of
21 employees that we're petitioning to represent, which is not a
22 matter in dispute. The parties agree that these individuals,
23 if they are employees, would not be part of any of these other
24 collective bargaining agreements.

25 With respect to counsel's argument, I would submit

1 respectively -- respectfully that it is not for The New School
2 to decide whether these individuals are employees, but for the
3 Board. And whether The New School is sincere or not in the
4 position that it takes, and its opinion that they're not
5 employees, that that's not the issue to be decided -- or I
6 mean, it's not for The New School to decide the issue presented
7 in this case.

8 HEARING OFFICER DAVIS: Well, I'm going to admit the
9 documents. And was that Employer's 11?

10 THE WITNESS: Uh-huh.

11 HEARING OFFICER DAVIS: You're offering 11 at this time
12 and I'm going to admit it. I think the documents show that the
13 institution, The New School, has experience with collective
14 bargaining, and in regard to that, may relate to its position
15 why the unit is not appropriate. So for that purpose, I'm
16 going to admit Employer's 11.

17 (Employer's E-11 received.)

18 MR. CATALANO: Thank you.

19 BY MR. CATALANO:

20 Q And in the same vein, Ms. Basta, just identify in quick
21 fashion the remaining documents, not relating to part-time
22 faculty.

23 A The next document doesn't have an exhibit number. It is
24 the University -- it's --

25 HEARING OFFICER DAVIS: May I see it?

1 THE WITNESS: It looks like it was skipped.

2 HEARING OFFICER DAVIS: Let's go off the record.

3 (Whereupon, a brief recess was taken.)

4 HEARING OFFICER DAVIS: Back on the record.

5 DIRECT EXAMINATION (continued)

6 (Employer's E-12 and E-13 marked.)

7 BY MR. CATALANO:

8 Q 11 now in evidence, could you refer to the few remaining
9 collective bargaining agreements that pertain to non -- that
10 pertain to unionized non-faculty, please. And you can do it in
11 quick fashion.

12 A Exhibit E-12 and E-13 relate to the University's agreement
13 with Local 94. The agreement, however, isn't with the --
14 between the University and Local 94, it's between the Realty
15 Advisory Board and Local 94, and governs the University's
16 relationship with Local 94. So E-12 is a stipulation of
17 agreement, and E-13 is the agreement that expired in 2014.

18 Q Okay. Just for the sake of the record, are you a
19 member -- The New School is a member of Realty Advisory Board?

20 A Yes.

21 Q Okay. And the terms and conditions of employment pertain
22 to which group of employees? Whom does Local 94 represent?

23 A To the engineers that work in our buildings.

24 Q Both documents pertain to them?

25 A Yes.

1 Q Okay.

2 MR. CATALANO: That's E-12 and E-13 I would offer at this
3 time, sir.

4 HEARING OFFICER DAVIS: Okay, Mr. Meiklejohn, I'm going to
5 take that you have a standing objection to the collective
6 bargaining agreements of this type. So unless you have any
7 unique objection, I'll just take it as a standing objection.

8 With that said --

9 MR. MEIKLEJOHN: Could I have -- just -- I think I have an
10 additional objection on this.

11 HEARING OFFICER DAVIS: Okay. Uh-huh.

12 MR. MEIKLEJOHN: Just could I ask the Witness one
13 question, first?

14 HEARING OFFICER DAVIS: If it's Voir Dire, yes.

15 MR. MEIKLEJOHN: I think so. It's borderline, but --

16 VOIR DIRE EXAMINATION

17 BY MR. MEIKLEJOHN:

18 Q The employees covered by Exhibits 12 and 13, are they
19 employees of the University?

20 A Yes.

21 Q Okay.

22 MR. MEIKLEJOHN: Okay, then I only have the same
23 objection.

24 HEARING OFFICER DAVIS: Okay, 12 and 13 are admitted.

25 (Employer's E-12 and E-13 received.)

1 MR. CATALANO: Thank you.

2 CONTINUED DIRECT EXAMINATION

3 (Employer's E-14 marked.)

4 BY MR. CATALANO:

5 Q The next document's before you.

6 A E-14 is the agreement between Local 32-BJ and the Realty
7 Advisory Board. It covers the facilities employees, who are
8 employed by the University, and maintain the University's
9 buildings and site.

10 Q Okay. And what kind of categories, when you say
11 "facilities"?

12 A Porters, handymen, and supers, primarily. There are other
13 titles under that agreement, but those are the ones we
14 primarily employ.

15 MR. CATALANO: Okay, I offer.

16 HEARING OFFICER DAVIS: Admitted.

17 (Employer's E-14 received.)

18 (Employer's E-15 marked.)

19 THE WITNESS: E-15. E-15 is the collective bargaining
20 agreement between SEIU Local 32-BJ and the University, and it
21 covers our unionized security officers.

22 MR. CATALANO: I offer it, sir.

23 HEARING OFFICER DAVIS: Admitted.

24 (Employer's E-15 received.)

25 (Employer's E-16 marked.)

1 THE WITNESS: E-16 is the last collective bargaining
2 agreement. It covers our Local 802 faculty members, who are
3 the part-time faculty members who teach at our jazz school.

4 MR. CATALANO: Okay, I offer it.

5 HEARING OFFICER DAVIS: Admitted.

6 (Employer's E-16 received.)

7 BY MR. CATALANO:

8 Q All right, now, with respect to other unionized faculty,
9 is there one agreement, which was first entered into in 2005,
10 and then repeated in 2009, and in fact, over the last month
11 with UAW?

12 A Yes.

13 (Employer's E-8, E-9, and E-10 marked.)

14 BY MR. CATALANO:

15 Q Okay. Describe essentially the relationship between The
16 New School and the UAW as it pertains to part-time faculty. Do
17 detail in general fashion what the collective bargaining
18 agreement relates to, which unit employees are covered, and
19 when did that relationship begin.

20 A So the original collective bargaining agreement is Exhibit
21 E-8, and it covers part-time faculty who are teaching at The
22 New School. It covers all of the terms and conditions of their
23 employment.

24 E-9 is the -- I'm sorry, no, E-9 is the most recent
25 memorandum of agreement that we entered into.

1 And E-10 is the memorandum of agreement that we entered
2 into in 2009. And E-9 and E-10 have not yet been incorporated
3 into the collective bargaining agreements, so we have two MOAs
4 and the collective bargaining agreement.

5 Q But extant today are the terms and conditions in the
6 original agreement, as modified by the most recent agreement,
7 for the period effective September 1, 2014, which is E-9, if
8 I'm not mistaken; is that correct?

9 A Yes.

10 Q Okay.

11 MR. CATALANO: I offer them.

12 MR. MEIKLEJOHN: No objection.

13 HEARING OFFICER DAVIS: Employer's 8 through -- 8, 9, and
14 10 are admitted.

15 (Employer's E-8, E-9, and E-10 received.)

16 BY MR. CATALANO:

17 Q Does that "faculty agreement," pertaining to part-time
18 faculty, apply to graduate students?

19 A No.

20 Q Okay. Now, generally speaking, apart from the unionized
21 faculty, how many non-unionized employees are at The New
22 School?

23 A Less than a thousand.

24 Q "Less than a thousand" could be 100 or 900.

25 A No, I think it's --

1 Q So approximately?

2 A I think it's close to 600.

3 Q Okay. So are these non-unionized employees subject to
4 various polices at The New School?

5 A Yes.

6 Q Okay. Are the full-time faculty members unionized?

7 A No.

8 Q Okay. And is there a handbook or other set of guidelines
9 and policies pertaining to full-time faculty?

10 A Yes.

11 Q And what's that document --

12 A It's Exhibit --

13 Q -- characterized as?

14 A It's --

15 Q And is it before you?

16 A Yes. It's The New School Full-time Faculty Handbook, and
17 it's Exhibit E-17.

18 (Employer's E-17 marked.)

19 BY MR. CATALANO:

20 Q And as to policies pertaining to terms and conditions of
21 employment, do they pertain to graduate students?

22 A No.

23 MR. CATALANO: Okay, I offer it.

24 HEARING OFFICER DAVIS: Admitted.

25 (Employer's E-17 received.)

1 HEARING OFFICER DAVIS: Did you have an objection, I'm
2 sorry.

3 MR. MEIKLEJOHN: No, no objection.

4 HEARING OFFICER DAVIS: Okay.

5 BY MR. CATALANO:

6 Q Now, in addition, for non-faculty, such as non-full-time
7 faculty, are there policies pertaining to full-time and part-
8 time employees that are found within certain documents?

9 A Yes.

10 Q Okay. And is there an institutional policies and
11 procedure -- procedural manual?

12 A Yes.

13 Q Okay. And can you refer to that, please, and advise the
14 Court -- Hearing Officer whether it has been marked for
15 identification.

16 A Yes, it is Exhibit E-18.

17 Q Okay.

18 (Employer's E-18 marked.)

19 MR. CATALANO: And I offer it at this time.

20 MR. MEIKLEJOHN: I would object on the grounds of
21 relevance, for the same reasons I started earlier; that we're
22 not contending that there's a community of interest between the
23 petitioned for employees and other employees. So the fact that
24 different human resources policies apply to other employees
25 goes to unit scope, but it does not go to employee status.

1 HEARING OFFICER DAVIS: I'm going to admit it for whatever
2 its weight is.

3 (Employer's E-18 received.)

4 MR. CATALANO: Can I --

5 HEARING OFFICER DAVIS: Employer's --

6 MR. CATALANO: -- just refer to that comment?

7 HEARING OFFICER DAVIS: Sure.

8 MR. CATALANO: Okay. Mr. Meiklejohn cross-examined Dr.
9 Sanger on the use of the word "hiring" in one of the prior
10 documents, implying that even though it may have referred to a
11 graduate student, that The New School somehow characterized
12 these people as employees. So the use of that generic term is
13 found in certain documents, yes, we agree. But The New School
14 knows quite well that students, it does not treat them as
15 students (*sic*).

16 So it's two fold; it goes to the community of interest,
17 and then whether or not we -- and this is when we get to
18 independent contract or labor relations employment law versus
19 employees, the intent of the Employer is, of course, relevant.
20 The weight will be accorded it by the Hearing Officer -- by the
21 Regional Director and then ultimately by the Board, that I
22 understand. But it does go -- I mean it is relevant to whether
23 or not we characterize and choose to treat these graduate
24 students as employees, which we do not.

25 So that's the secondary feature, and the reason why we are

1 offering it today. That's the relevance that I might suggest
2 it has.

3 HEARING OFFICER DAVIS: Okay. All right, I've admitted
4 the document, and I'll just refrain from making any comments.

5 MR. CATALANO: Thank you.

6 BY MR. CATALANO:

7 Q Okay, now, this institutional policies, does it pertain to
8 those conditions that apply to graduate students?

9 A No.

10 Q Now, is there tuition waiver -- is there a tuition waiver
11 for employees at The New School?

12 A Yes, for virtually all categories of employees there's a
13 tuition waiver benefit.

14 Q And is that tuition waiver available to students?

15 A No.

16 Q Okay. And is it available to the six punitive categories
17 sought by the Petitioner to represent, that is to say research
18 assistants, research associates, teaching assistants, teaching
19 associates, course assistants, and tutors?

20 A No.

21 MR. CATALANO: Now, we also have before the Witness, Mr.
22 Davis, just an extract of full-time and part-time benefits. We
23 didn't choose -- this is -- this comes off the link site, and
24 Ms. Basta will correct me if I'm wrong, but we're just
25 referring the Hearing Officer to the fact that there are part-

1 time benefits and full-time benefits. This is an instrument or
2 these two documents are instruments that will just advise the
3 Hearing Officer that these benefits exist, and we brought in an
4 extract.

5 Again, we have provided them to counsel, pardon me if I
6 only made a copy of one of them, rather than both, but both of
7 them are before the Witness, sought by me to be introduced into
8 evidence. Part-time and full-time, you see that up at the top?

9 THE WITNESS: Yeah.

10 MR. MEIKLEJOHN: We've --

11 MR. CATALANO: You've got them both?

12 MS. ROTHGEB: Yeah.

13 MR. CATALANO: Great.

14 MR. MEIKLEJOHN: There's one for part-time and one for
15 full-time.

16 MR. CATALANO: Indeed.

17 MR. MEIKLEJOHN: Yes, okay. Then --

18 MS. ROTHGEB: Have they been marked?

19 MR. CATALANO: They should have been marked.

20 HEARING OFFICER DAVIS: Why don't you identify the
21 document, and tell us whether it has a number, the "E" number.

22 THE WITNESS: The document E-19 is a link from the human
23 resources website regarding part-time faculty benefits. And
24 document E-20 is a link from the human resources website
25 regarding full-time faculty and staff benefits.

1 (Employer's E-19 and E-20 marked.)

2 MR. CATALANO: Okay, I offer them. It's on the website.
3 It can be found publically. But at least for The New School
4 community. And therefore, I just wanted to advert to those
5 documents. I offer them. The same rationale.

6 MR. MEIKLEJOHN: And I object only on the grounds that it
7 goes to community of interest, and not employee status.

8 HEARING OFFICER DAVIS: I'm going to admit the documents.
9 19 and 20 are admitted.

10 (Employer's E-19 and E-20 received.)

11 MR. CATALANO: Thank you.

12 BY MR. CATALANO:

13 Q Now, as far as graduate students, has The New School
14 treated them as employees?

15 A No.

16 Q Okay. Are there separate policies for students?

17 A Yes.

18 Q And do these polices that we're about to touch upon relate
19 to employees or merely to the students?

20 A The students only.

21 Q Okay. In that regard, who are these policies enforced by,
22 as a general proposition? Or administered.

23 A Policies relating to students are enforced by the Office
24 of Student Services, by the dean's office at the schools,
25 and/or by the Provost.

1 Q Okay. Can you refer now before you to certain of the
2 documents, identify them for the record, and the number.

3 MR. CATALANO: And it's a series of documents, counsel,
4 we're going to attempt to introduce them into evidence, absent
5 your objection, I hope they will be admitted. But I await your
6 commentary.

7 (Employer's E-21 marked.)

8 BY MR. CATALANO:

9 Q What's the first one?

10 A E-21 is the Student Code of Conduct.

11 MR. CATALANO: I offer it.

12 MR. MEIKLEJOHN: No objection.

13 HEARING OFFICER DAVIS: Okay, E-21 is admitted.

14 (Employer's E-21 received.)

15 (Employer's E-22 marked.)

16 BY MR. CATALANO:

17 Q E-22.

18 A Policy on Recognized Student Organizations.

19 MR. CATALANO: I --

20 MR. MEIKLEJOHN: Hold on a minute. I just have to find
21 it. I got it. I would object to this one on the grounds of
22 relevance.

23 HEARING OFFICER DAVIS: I'm going to admit it. 22 is
24 admitted.

25 (Employer's E-22 received.)

1 MR. CATALANO: Thank you.

2 (Employer's E-23 marked.)

3 BY MR. CATALANO:

4 Q The next one?

5 A E-23 is the Principles and Procedures Governing University
6 Financial Aid.

7 MR. CATALANO: I offer it.

8 MR. MEIKLEJOHN: No objection.

9 HEARING OFFICER DAVIS: E-23 -- Employer 23 is admitted.

10 (Employer's E-23 received.)

11 (Employer's E-24 marked.)

12 BY MR. CATALANO:

13 Q The subsequent one?

14 A E-24 is Privacy Rights, Family Educational Rights and
15 Privacy Act.

16 Q Okay. And is the acronym "FERPA"?

17 A Yes.

18 Q Okay. The protections of FERPA apply to whom? To
19 students or to employees or to both?

20 A The protections cover students.

21 Q Only?

22 A Only students.

23 Q Okay.

24 MR. CATALANO: I offer it.

25 MR. MEIKLEJOHN: No objection.

1 HEARING OFFICER DAVIS: Employer 24 is admitted.

2 (Employer's E-24(a) received.)

3 (Employer's E-24(b) marked.)

4 BY MR. CATALANO:

5 Q Next?

6 A Actually, this one is also numbered Employer 24.

7 Q But you can --

8 A Okay.

9 Q -- you can characterize the difference, if there is one,
10 between the two documents.

11 A Okay, this is called Family Educational Rights and Privacy
12 Act. And it appears to be a summary of FERPA. A one-paragraph
13 summary.

14 MR. CATALANO: Would we like, Mr. Court reporter and Mr.
15 Hearing Officer to just make one (a) -- 24(a) and 24(b)?

16 HEARING OFFICER DAVIS: Do -- how -- sure.

17 MR. MEIKLEJOHN: I have no objection.

18 HEARING OFFICER DAVIS: No objection?

19 MR. MEIKLEJOHN: No.

20 HEARING OFFICER DAVIS: Okay, so the first document, which
21 was marked 24 will be 24(a). And the document just referred to
22 by the Witness, which is a one-paragraph summary of the Family
23 Educational Rights and Privacy Act will be 24(b). And those
24 are admitted.

25 (Employer's E-24(b) received.)

1 (Employer's E-25 marked.)

2 THE WITNESS: Employer 25 is titled "Expungement of
3 Student Disciplinary Records, The Office of Student Rights and
4 Responsibilities At The New School."

5 MR. CATALANO: I offer it.

6 MR. MEIKLEJOHN: No objection.

7 HEARING OFFICER DAVIS: Employer 25 is admitted.

8 (Employer's E-25 received.)

9 (Employer's E-26 marked.)

10 THE WITNESS: Employer 26 is Non-Academic Disciplinary
11 Procedures.

12 MR. CATALANO: I offer it.

13 MR. MEIKLEJOHN: No objection.

14 HEARING OFFICER DAVIS: Employer 26 --

15 THE WITNESS: Yes.

16 HEARING OFFICER DAVIS: -- is admitted.

17 (Employer's E-26 received.)

18 BY MR. CATALANO:

19 Q Now, there has been testimony from a prior witness
20 concerning payments made to graduate students who serve in the
21 various petitioned for categories, such -- and it's in Exhibit
22 7 that there are certain payments referred to.

23 Can a graduate student -- does a graduate student who
24 receives a stipend or tuition assistance have any contributions
25 made into a 403(b) or 401(k), as the term is ordinarily used,

1 outside of the educational institutions by The New School?

2 A No.

3 Q Okay. And do those employees have the ability to
4 contribute into the pension plan with respect to those
5 payments?

6 A Other -- do the --

7 Q Do those -- excuse me, graduate students.

8 A No.

9 Q Okay.

10 A No access.

11 Q And can other -- can other employees make such
12 contributions and/or have contributions made on their behalf --

13 A Yes.

14 Q -- by The New School?

15 A Yes.

16 Q Okay. With respect to those payments, and let's assume a
17 graduate assistant has been given a guideline, or a research
18 assistant, to not expend towards the attainment of his or her
19 Masters or Ph.D. degree, we would like you to spend
20 approximately 20 hours or no more than 20 hours, no more than
21 10 hours per week.

22 Now, in the event that that individual expends more than
23 those hours acting as a teaching assistant, or indeed more than
24 40 in a week, does he or she receive time and a half or that
25 other statutory benefit under the Fair Labor Standards Act of

1 the United States Department of Labor? Time and a half.

2 A I don't think that has ever happened. And if that were
3 the case, I don't think they would be eligible to receive any
4 overtime.

5 Q Okay. And do you -- in other -- but do you know, and it
6 may be not a question for you, but with respect to these
7 stipends of \$5100 or an hourly rate of 5100, if person worked a
8 varying number of hours, in other words as a teaching
9 assistant, 23 hours in a week versus 20 hours versus 17 hours,
10 is that stipend -- does it vary? Does it become 5300 or 4600?
11 In other words --

12 A No, the stipend is set.

13 MR. MEIKLEJOHN: Thank you, I have nothing else.

14 HEARING OFFICER DAVIS: Let's go off the record.

15 (Whereupon, a brief recess was taken.)

16 HEARING OFFICER DAVIS: Back on the record.

17 During an off the record conversation, counsel discovered
18 that he mistakenly neglected to put in a document, so I'm going
19 to allow you to do that.

20 MR. CATALANO: And my thanks to counsel for advising me
21 that I had omitted that, so thank you.

22 DIRECT EXAMINATION (continued)

23 (Employer's E-27 marked.)

24 BY MR. CATALANO:

25 Q What is that, and its number.

1 A E-27 is titled "Academic Policies."

2 Q Okay. And does this pertain to students?

3 A Yes.

4 Q Alone?

5 A Yes.

6 MR. CATALANO: I offer it.

7 MR. MEIKLEJOHN: Well, since we pointed out that it wasn't
8 included, I must not have an objection.

9 HEARING OFFICER DAVIS: Employer 27 is admitted.

10 (Employer's E-27 received.)

11 HEARING OFFICER DAVIS: I just --

12 MR. CATALANO: Thank you.

13 HEARING OFFICER DAVIS: -- want to indicate that I've
14 admitted documents, which show that the University, The New
15 School, has treated the petitioned for individuals as students;
16 that's your contention?

17 MR. CATALANO: Yes, sir.

18 HEARING OFFICER DAVIS: Rather than employees. And I'm
19 going to admit -- I admitted those documents just for that
20 purpose. I don't know that that was a point of contention, but
21 nevertheless, I admitted them for that purpose.

22 So, have you concluded your direct examination?

23 MR. CATALANO: I have.

24 HEARING OFFICER DAVIS: Great.

25 Mr. Meiklejohn.

1 CROSS-EXAMINATION

2 BY MR. MEIKLEJOHN:

3 Q Good morning, Ms. Basta.

4 MR. CATALANO: May I go off the record for a second?

5 HEARING OFFICER DAVIS: Yes, off the record.

6 (Whereupon, a brief recess was taken.)

7 HEARING OFFICER DAVIS: Back on the record.

8 CROSS-EXAMINATION (continued)

9 BY MR. MEIKLEJOHN:

10 Q I think I got to the point where I said good morning,
11 right?

12 A Good morning.

13 Q All right. As senior director of labor relations, you
14 testified you're involved in the collective bargaining process
15 and ensuring that the collective bargaining agreements are
16 complied with; that's correct?

17 A Yes.

18 Q Do you have any role with respect to the -- the non-union
19 employees that you've testified about?

20 A Yes.

21 Q What is your role with respect to those people?

22 A I am the second most senior person in human resources, so
23 I work directly with the Senior VP for HR on all matters
24 related to the department and various issues related to
25 employees throughout the University.

1 Q So you're involved in the -- or administering the terms
2 and conditions of employment for all these categories of
3 employees you've talked about?

4 A Yes.

5 Q Now, you also introduced some policies related to
6 student -- policies that relate to students.

7 A Yes.

8 Q How are you familiar with those?

9 A I am familiar with them from our website. They are not
10 policies that HR administers, but we are familiar with them the
11 say we're familiar with the programs the University offers.
12 We're familiar with the day-to-day operations of the University
13 as an educational institution.

14 Q And so you are familiar with the fact, for example, that
15 teaching assistants and teaching fellows are paid by the
16 University?

17 A Yes.

18 Q And I guess, you testified that to your knowledge the
19 hourly employees, such as graders and tutors, have never put in
20 more than 40 hours a week, so you haven't had to confront the
21 question of whether they would get time and a half; correct?

22 A Yes.

23 Q So how do you know that?

24 A How do I know what?

25 Q What -- whether graders and tutors have worked more than

1 40 hours or not.

2 A Well, given the fact that I have a law degree and
3 practiced labor and employment law for many years, the people
4 within my area often ask me questions. We talk about general
5 compliance issues, so the question has come up about how you
6 pay student -- graduate students who are providing teaching to
7 the University.

8 Q So those questions would come to you because of your
9 expertise?

10 A Yes.

11 Q And position?

12 A Yes.

13 Q Now, I guess, I think this may already clear from the
14 record, but those classification of student paid service
15 providers, are paid from a payroll account; correct?

16 A Students are paid through payroll, yes.

17 Q Right. I mean, the students who do --

18 MR. MEIKLEJOHN: Can I say "who do work for the
19 University?" Is that a word that won't raise an objection?

20 MR. CATALANO: I think everybody understands what our
21 mutual positions are.

22 HEARING OFFICER DAVIS: You can answer the question.

23 MR. MEIKLEJOHN: Can you repeat the question?

24 MR. MEIKLEJOHN: Probably not. I'll ask another question.

25 BY MR. MEIKLEJOHN:

1 Q In order to work, the students in the classifications that
2 we're talking about, must provide -- must provide I-9 complaint
3 documents; is that correct?

4 A Yes.

5 Q And taxes are withheld from their pay from the payroll
6 account?

7 A Yes.

8 Q And that's true whether they're paid hourly or whether
9 they're paid by stipend, right?

10 A Yes.

11 Q Now, you say that the stipend doesn't vary based upon how
12 many hours a teaching fellow, for example, would work; is that
13 correct?

14 A That's my understanding, yes.

15 Q Do you have other salaried employees?

16 A Do we have salaried employees at the University?

17 Q Yes, I'm sorry.

18 A Yes, we do.

19 Q I used the word "other," I didn't mean to trick you with
20 that.

21 A No, I just want to make sure I understand the question.
22 Yeah, we have -- we do have salaried employees at the
23 University.

24 Q And do their pay vary according to the number of hours
25 they work in a given week?

1 A No.

2 Q Now, it's -- we established earlier that the word "hired"
3 is used when a student is placed in one of these positions.
4 When a student is hired in one of these positions, is someone
5 in the human resources department notified?

6 A Yes.

7 Q And the hiring decisions are made outside the human
8 resources department; correct?

9 A Yes. The -- human resources is processing pay, is
10 processing those I-9s.

11 Q When a --

12 MR. MEIKLEJOHN: Well, let me have this document marked as
13 Petitioner's --

14 HEARING OFFICER DAVIS: 14.

15 MR. MEIKLEJOHN: -- Exhibit 14.

16 (Petitioner's P-14 marked.)

17 HEARING OFFICER DAVIS: Off the record.

18 (Whereupon, a brief recess was taken.)

19 HEARING OFFICER DAVIS: Back on the record.

20 CROSS-EXAMINATION (continued)

21 BY MR. MEIKLEJOHN:

22 Q Okay, do you have Petitioner's Exhibit -- no. Now, you
23 have Petitioner's Exhibit 14 in front of you.

24 A Yes.

25 Q And I'll just ask you to take a look at it and inquire as

1 to whether you recognize this as the type of document that is
2 transmitted by the academic department to a, in this case to a
3 teaching assistant when the teaching assistant is selected to
4 work on a particular course.

5 (Witness examined the document.)

6 THE WITNESS: Yes.

7 BY MR. MEIKLEJOHN:

8 Q And if you look at the third paragraph, it says, "You will
9 receive a letter from human resources by e-mail in late June
10 that will provide further information regarding this position."
11 Do you see that sentence?

12 A Yes.

13 Q What information regarding the position, if you know, is
14 provided in that letter from human resources?

15 A I don't know. I would have to see that letter.

16 Q Okay.

17 MR. MEIKLEJOHN: We would -- I don't think we got a copy
18 of it. We would request a copy of that letter.

19 MR. CATALANO: A letter from HR?

20 MR. MEIKLEJOHN: Yeah. It doesn't necessarily have to
21 relate to this same redacted person.

22 MR. CATALANO: No, no question. Thank you.

23 MR. MEIKLEJOHN: Okay, I move the admission of
24 Petitioner's 14.

25 MR. CATALANO: No objection.

1 HEARING OFFICER DAVIS: Petitioner's 14 is admitted.

2 (Petitioner's P-14 received.)

3 HEARING OFFICER DAVIS: Just for the record, who's Sarah
4 Page?

5 THE WITNESS: I don't recognize that name.

6 HEARING OFFICER DAVIS: Okay.

7 MR. MEIKLEJOHN: It came to us this way. I -- I mean, I
8 would venture to speculate that she is --

9 HEARING OFFICER DAVIS: Let's not speculate. You don't
10 need to do that.

11 MR. MEIKLEJOHN: All right. Perhaps counsel can check and
12 determine that she's an administrative person in the
13 architecture department.

14 MR. CATALANO: Yeah.

15 BY MR. MEIKLEJOHN:

16 Q When a TA is seeking a -- or I'm sorry; when a student is
17 seeking to apply for a position as a TA, do the applications
18 for that position come to the human resources online job
19 system?

20 A I believe it's used as a portal.

21 Q Can you explain what you mean what you say it's used as a
22 portal?

23 A All of the decisions about who -- which students will
24 become a teaching fellow or a teaching assistant or one of the
25 other categories that we've talking about, is made outside of

1 human resources by the academics that are responsible for
2 assigning students. The physical process by which applications
3 are collected is the human resources website.

4 Q Does human resources play a role in the selection of
5 clerical or building service employees?

6 A Yes.

7 Q Does human resources play a role in the selection of
8 tenured faculty or tenured track faculty?

9 A Limited role.

10 Q What's that --

11 A But it's primarily in the Provost's office would -- that
12 that is -- human resources does process those applications.

13 Q And human resources also processes the applications for
14 teaching assistants and teaching fellows through this portal?

15 A We don't process them, we just collect them. We don't do
16 any, sort of, review of them.

17 Q And what sort of review is conducted of applicants for
18 tenured track faculty positions by the human resources
19 department?

20 A I don't know the details.

21 Q Other than collecting the application, do you know
22 anything that the human resources does with respect to
23 processing the applicants' applications for tenured track
24 faculty positions?

25 A I'm not familiar with tenured -- tenured track faculty.

1 But I can tell you about all of the -- in detail, about how the
2 process for the unionized employees.

3 Q Right. Okay.

4 (Counsel confer.)

5 HEARING OFFICER DAVIS: While --

6 BY MR. MEIKLEJOHN:

7 Q When you --

8 HEARING OFFICER DAVIS: It's okay.

9 BY MR. MEIKLEJOHN:

10 Q When you say that applications are processed through the
11 human resources portal, the openings for positions as TAs and
12 teaching faculty -- teaching fellows, et cetera, are also --
13 are posted at the human resources website to notify students of
14 those positions; correct?

15 A I believe so.

16 Q Are those -- do you know whether openings for teaching
17 assistants and -- I'll withdraw that question.

18 You -- could you take a look at Employer Exhibit 22,
19 please?

20 HEARING OFFICER DAVIS: Aside from the number, what is
21 that?

22 MR. MEIKLEJOHN: That's the policy on recognize student
23 organizations.

24 HEARING OFFICER DAVIS: Thank you.

25 BY MR. MEIKLEJOHN:

1 Q This policy -- you got it?

2 A Yeah.

3 Q All right. This policy does not apply to students in
4 their capacity as teaching assistants or teaching fellows or
5 the other jobs that we're -- the other positions that we're
6 talking about here, does it?

7 A Well, the policy applies to all students. So anyone who's
8 a student at The New School is governed by this policy.

9 Q If you look at Point Number 3 it says, "No student
10 organization activities shall be carried out for the pecuniary
11 benefit of its individual members."

12 A Yes.

13 Q But individual students receives pecuniary benefits from
14 working as teaching assistants and research assistants, et
15 cetera; correct?

16 A You mean they're paid by the University?

17 Q Well, I don't know.

18 A I'm not sure --

19 Q Let's go back to this policy. It says that the -- "No
20 student organization activities shall be carried out for
21 pecuniary benefit of its individual members." What does that
22 mean?

23 A I don't enforce this policy. I can tell what I think it
24 means as a layperson, administrative, university.

25 Q Well, you're the witness who introduced it, so yes.

1 A Okay. Then what this means is that the students cannot
2 form an organization that is carried out in order to benefit
3 the individual members of the students. So they can't use an
4 organization to make money for themselves.

5 Q And student organizations --

6 Could you take a look at Employer 23? Was that -- that's
7 the principles of procedures governing the university financial
8 aid?

9 A Yes.

10 Q And if you could look to the very last page, the very last
11 numbered point, it says, "The University should make every
12 reasonable effort to provide on-campus employment
13 opportunities, over and above work opportunities provided
14 through the college work study program."

15 A Yes.

16 Q Do you know what is done to carry out that element of the
17 policy?

18 A I don't.

19 Q Is finding teaching assistant, teaching fellow, research
20 assistant, grading and tutor positions one of the ways that The
21 New School tries to carry out this policy?

22 A Yes. I believe so.

23 Q So -- and so within at least the meaning of this document,
24 the relationship that is formed between the University and
25 these individuals is regarded as one of employment; is that

1 correct?

2 A I don't agree with that characterization. I think the
3 word "employment" is used, but I think that the concept is
4 that, back to the title of the policy, it's principles and
5 procedures governing university financial aid.

6 Q So you're suggesting that the University uses the term
7 "employment" in different ways, in different context to suit
8 its purposes?

9 MR. CATALANO: Objection.

10 HEARING OFFICER DAVIS: Sustained.

11 BY MR. MEIKLEJOHN:

12 Q You have participated in negotiations with the adjunct
13 union, the part-time -- the union representing part-time
14 employees?

15 A Yes.

16 Q And these faculty members are engaged in fulfilling the
17 teaching mission of the University? Of The New School.

18 A Yes. Yes.

19 Q And the teaching assistants and teaching fellows are also
20 involved in fulfilling the teaching mission of The New School;
21 correct?

22 A That I can't say. I don't have a -- I can't answer that
23 right now.

24 Q Okay. If you could look at the collective bargaining
25 agreement governing Employer Exhibit 8, the collective

1 bargaining agreement with Academics Come Together.

2 A Okay.

3 Q Could you turn to Page 8, Article 8. The -- can you
4 explain why that provision is included in the collective
5 bargaining agreement?

6 MR. CATALANO: Can you just read the sentence, Mr.
7 Meiklejohn?

8 MR. MEIKLEJOHN: Oh. Do you want a copy?

9 MR. CATALANO: No. It's there, but if you don't mind. Or
10 I would like the Witness to read it aloud so that the reader of
11 the record knows to which we refer.

12 BY MR. MEIKLEJOHN:

13 Q Why don't you read Article 8 on Page 8 of Exhibit 8 aloud.

14 A Article 8 is entitled "Academic Freedom." "The University
15 and the Union agree that academic freedom is essential to the
16 fulfillment of the purposes of the University. University
17 policies on academic freedom adopted January 21, 1987 and
18 October 4, 1989 attached hereto as Appendix A, shall be in
19 effect for all faculty."

20 Q Now, my question is, can you explain why that's included
21 in the collective bargaining agreement?

22 A I don't know, I wasn't at The New School in 2005 when this
23 was first negotiated. I have looked at other collective
24 bargaining agreements and there commonly is a provision
25 regarding academic freedom.

1 Q Do you know what the purpose of that provision is?

2 A I think it's -- it is what it says it is. I believe the
3 purpose is to acknowledge that the University and Union agree
4 that academic freedom is essential to the fulfillment of the
5 purposes of the University, and then to clarify what policy
6 they're referring to.

7 Q And it's just to ensure that collective bargaining doesn't
8 interfere -- the collective bargaining relationship doesn't
9 interfere with academic freedom?

10 A I think you are paraphrasing what's there. I would say
11 that it is what it says it is. And those words I read aloud
12 with text are what it's supposed to be and what it means.

13 Q In your experience, has collective bargaining with respect
14 to the part-time faculty, impinged in any way on the academic
15 freedom of the institution?

16 A Of the institution or of the individuals?

17 Q Either.

18 A No.

19 Q Do you have any reason to believe that collective
20 bargaining with respect to teaching assistant, teaching
21 fellows, research associates, and research assistants and the
22 other classifications would impinge upon the academic freedom
23 of the institution or individuals?

24 MR. CATALANO: May I say that that's asking for an
25 opinion, rather than a fact, guided by what the Hearing Officer

1 would like to do under those circumstances?

2 HEARING OFFICER DAVIS: I'm going to overrule the
3 objection. I understand the objection.

4 You can answer the question.

5 THE WITNESS: Can you ask one more time, sorry.

6 MR. MEIKLEJOHN: I hate to put you in this spot, Adrien;
7 do you mind reading it back?

8 HEARING OFFICER DAVIS: Off the record.

9 (Whereupon, a brief recess was taken.)

10 HEARING OFFICER DAVIS: Back on the record.

11 CROSS-EXAMINATION (continued)

12 BY MR. MEIKLEJOHN:

13 Q I'll re-ask it. Do you have any reason to believe that
14 collective bargaining with respect to the classifications of
15 employees we're talking about would impinge upon the academic
16 freedom of either the -- either any individuals or of the
17 institution?

18 A I honestly don't know. I haven't thought through that
19 issue. I think it's a complex issue.

20 Q Okay.

21 MR. MEIKLEJOHN: No -- I don't think I have any further
22 questions.

23 HEARING OFFICER DAVIS: Okay. Just for the --

24 MR. MEIKLEJOHN: Just a minute.

25 HEARING OFFICER DAVIS: Just for the record, in Article 8,

1 it refers to an appendix and it identifies the appendix as
2 Appendix A. It appears in the back of the agreement that it is
3 Appendix I.

4 MR. MEIKLEJOHN: I think it's Number 1, but yes.

5 HEARING OFFICER DAVIS: Number 1, yes. That would be it,
6 so just for the record.

7 MR. MEIKLEJOHN: I agree.

8 HEARING OFFICER DAVIS: Okay.

9 MR. MEIKLEJOHN: And it leads one to think that I might
10 have played some role in creating the document, because that's
11 the kind of mistake I make all the time.

12 MR. CATALANO: We'll allow you to take culpability.

13 (Counsel confer.)

14 MR. MEIKLEJOHN: I have no further questions.

15 MR. CATALANO: Nor do I, thank you.

16 HEARING OFFICER DAVIS: Great, you're excused. Thank you
17 very much.

18 (Witness excused.)

19 HEARING OFFICER DAVIS: Is our next witness here?

20 MR. CATALANO: Can we go off the record?

21 HEARING OFFICER DAVIS: Oh, let's go off the record.

22 (Whereupon, a brief recess was taken.)

23 HEARING OFFICER DAVIS: Back on the record.

24 Hi, Mr. Kostrzewa, please raise your right hand.

25 (Whereupon,

1 Q Okay. Often referred to by the acronym NSSR?

2 A Correct.

3 Q Okay. And is one of -- is NSSR one of the number of
4 divisions at The New School?

5 A It is.

6 Q Okay. And there has been testimony in the record that
7 there are five divisions, formerly seven or eight what -- as
8 the case may be, but one of the five divisions at current?

9 A That is correct.

10 Q Currently. Okay. Please tell us what your educational
11 background is.

12 A I hold a Master's degree in Sociology from University of
13 Warsaw, Poland. And I studied for a Ph.D. degree at the
14 Graduate Center of City University of New York.

15 Q Okay. How long have you been with The New School?

16 A I started at The New School in September 1998, which is
17 almost 17 years.

18 Q Okay. And prior to arriving at The New School, do you
19 have employment elsewhere?

20 A Yes, I did. I was employed --

21 Q Would you so tell us what that was?

22 A For eight years prior to employment at The New School, I
23 was deputy director at The Commonwealth Fund, which is a
24 private foundation in New York City, and I was responsible for
25 an exchange program called Harkness and Atlantic Fellowships.

1 Q Okay. And was that an exchange program with other
2 countries?

3 A That was an exchange program for academics and young
4 professionals, and it involved the United States, the United
5 Kingdom, Australia, and New Zealand.

6 Q Okay. And since joining The New School, how many
7 positions have you had? And can you just tell the Hearing
8 Officer what those positions were, and for what period of time,
9 approximately, you held each such position?

10 A I was fired hired as director of scholarships and student
11 funding in 1998, and I held that position until summer of 2000,
12 when I assumed the position of assistant dean of academic
13 affairs and scholarships. And I held that position until
14 summer of 2007, when I became associate dean for academic
15 planning and administration, and I held that position until
16 summer of 2013, when I became vice dean.

17 Q Okay. In connection with the various divisions, have all
18 of these positions been held by you at NSSR?

19 A All of these positions were at the NSSR.

20 Q Okay. Generally speaking, in your current position as
21 vice dean, what -- tell the Hearing Officer and counsel what
22 you general discharge as your duties.

23 A My primary responsibility is to manage resources for
24 faculty and students at the Graduate School, NSSR. I directly
25 oversee the academic budget, and the office of academic

1 affairs, which is dealing with student issues.

2 In addition, I serve on a few key governing committees,
3 including NSSR Leadership Council, Committee on Admissions,
4 Awards, and Scholarships, which I chair, and University
5 Research Council.

6 Q Do you interact with the Provost's office?

7 A I do.

8 Q And how often is that the case?

9 A If not daily then at least weekly.

10 Q So you have some familiarity with how the other divisions
11 are run and what their academic policies might be? Or are, as
12 a general proposition.

13 A I do. I sit on weekly meetings that bring together
14 associate deans from all divisions and the Provost's staff, so
15 I'm quite familiar with how others work.

16 Q Thank you.

17 Now, please advise us as to The New School for Social
18 Research's history, as it relates to awarding of graduate
19 degrees and whether that might have varied to some degree from
20 the other divisions, and historically what role it assumed, and
21 when in the awarding of graduate degrees.

22 A As others may have testified, The New School was
23 established in 1918, primarily as an institution of continuing
24 education, and not until 1933 did it become a traditional
25 university. And in 1933, Alvin Johnson, who was then president

1 of The New School, decided to organize what was essentially a
2 rescue mission of Jewish academics and other political
3 opponents in Nazi Germany, when Nazi Party came to power, who
4 were fired or otherwise removed from German universities.
5 Johnson, with the help of the Rockefeller Foundation, and
6 several philanthropists in the United States, brought about, I
7 think 180 scholars and their families to New York, who were
8 expelled from the institutions in Germany, and some of them
9 remained at The New School for a number of years or decades as
10 faculty members, but not all of them. Some went on to other
11 institutions and other careers.

12 So in 1934, what was originally called University in Exile
13 was constituted into Graduate Faculty of Political and Social
14 Science, and it was recognized by the regents of the State of
15 New York and allowed to grant Master's and Ph.D. degrees at The
16 New School.

17 Q Thank you.

18 Now, does NSSR award undergraduate degrees?

19 A No, it does not.

20 Q Okay. Now, what percentage of the Ph.D. candidates at The
21 New School are currently enrolled at NSSR, as compared to other
22 divisions, approximately? And how many are there *in toto*, and
23 what percentage are enrolled at the -- in NSSR?

24 A Of the Ph.D.'s did you ask?

25 Q Yes, sir.

1 Q I believe there are almost 500 Ph.D. students at the NSSR,
2 and about 60 at The New School of Public Engagement. So I
3 would say 90 percent of the Ph.D. students are at the NSSR.

4 We also have a degree called Doctor of Social Science, and
5 there's one person enrolled in that degree.

6 Q Okay. And can you tell us what historical role and
7 current role NSSR has as a research institution? And I don't
8 mean that in a specific scientific way, but in conducting and
9 enhancement of research and learning, can you tell us what role
10 NSSR has had and does have?

11 A Historically, the NSSR is the research division of the
12 University in the subjects that it teaches and conducts
13 scholarship in.

14 Recently, the University expanded its research mission,
15 and largely thanks to the current Provost Tim Marshall, the
16 University introduced more research programming in other parts
17 of the University. But historically, the NSSR is the research
18 division.

19 Q All right. How many full-time faculty are on -- in NSSR,
20 and part-time faculty, approximately?

21 A I believe that as of this semester, spring 2015, there are
22 72 full-time faculty members, 16 part-time faculty members, and
23 a handful of one-year or one-semester term faculty, and also a
24 handful of postdoctoral fellows.

25 MR. MEIKLEJOHN: I'm just -- could I just ask for a

1 clarification of one of the answers? Did you say there were 60
2 or 16 part-time faculty?

3 THE WITNESS: Sixteen, 1-6.

4 MR. MEIKLEJOHN: 1-6, okay.

5 THE WITNESS: In the spring of 2015.

6 BY MR. CATALANO:

7 Q Okay, you touched upon the fact that there are Ph.D.
8 candidates at NSSR. Can you tell us whether there are Master's
9 degree programs and/or candidates for such a degree at NSSR?

10 A Yes, there are Master's -- Master's degree students. I
11 believe it's a little over 400 at the current moment.

12 Q Okay. And can you, without having a need to exhaust all
13 of the programs, can you tell us what areas of learning
14 Master's degrees are offered in?

15 A Master's degrees are offered in anthropology; economics;
16 global political economy and finance; liberal studies;
17 historical studies; a new program that started this year
18 creative publishing and critical inquiry; philosophy; politics,
19 psychology; and sociology.

20 Q Okay. And do you have MS degree?

21 A We have one MS degree, Master of Science degree in
22 economics.

23 Q Okay. And since I've now asked you about the programs
24 offered for Master's and MS, please tell us what Ph.D. programs
25 are offered at NSSR.

1 A We have seven Ph.D. programs in anthropology; economics;
2 philosophy; politics;, clinical psychology; cognitive, social
3 and developmental psychology, we call it "CSD"; and sociology.

4 Q Okay. And is there a Doctor of Social Science degree
5 offered?

6 A It is. There is a Doctor of Social Science offered and
7 certified by the State of New York.

8 Q And in order to be enrolled in that program, what degree
9 must you already have had?

10 A That program is designed for students who already have a
11 Ph.D. in one of our disciplines.

12 Q Okay.

13 A Of social science or philosophy.

14 Q And there -- is there any particular requirement in order
15 to obtain a Ph.D. in anthropology or psychology where you must
16 have received your MA degree?

17 A Could you please rephrase the question?

18 Q In order -- in order to receive a Ph.D. in anthropology
19 and psychology, is there any requirement at The New School as
20 to the locus, as to the location, as to where you had received
21 your Master's degree?

22 A Yes. These are two programs that do not allow direct
23 admission to Ph.D., and require also students to obtain a
24 Master's degree first at The New School for Social Research.

25 Other doctoral departments allow and directly admit a

1 Ph.D. student who have prior graduate training and a Master's
2 degree in the discipline to which they are admitted to the
3 Ph.D. or closely aligned discipline.

4 Q Okay. Are there any programs offered where only Master's
5 degree might be obtained and not a Ph.D. at NSSR? And I
6 preface this by the universal questioning being as it relates
7 to NSSR for the future. But are there any Master's programs
8 not offered in the form of a Ph.D. program?

9 A Yes. We call them "terminal" degrees, Master's degrees.
10 And they're offered at NSSR in liberal studies, historical
11 studies, and creative publishing and critical inquiry.

12 Q Okay. I'm going to add a little specificity to those
13 answers, with respect to documentation. In order to obtain a
14 Master's degree, generally speaking, how many credits must be
15 had by the student?

16 A It's a uniform New York State requirement that all
17 Master's degrees granted in New York State require 30 credits.

18 Q Okay. And in that respect, are there applications and
19 then acceptance letters pertaining to the Master's programs?

20 A There are.

21 Q Okay.

22 A Both applications and acceptant letter -- acceptance
23 letters.

24 Q With the acquiescence of the Hearing Officer, the court
25 reporter has been kind of enough to mark documents, Mr.

1 Kostrzewa. And the first one I'm going to refer to, happily
2 redacted, is dated March 12, 2012.

3 MR. CATALANO: Again, I've advised counsel that we've
4 taken student names out. No need for them. And okay.

5 BY MR. CATALANO:

6 Q So if you wouldn't mind looking at those pieces of paper,
7 hopefully five in total. Okay, and can you just tell us what
8 they are? And the number that the court reporter has put on
9 the document. It should be down --

10 A So I'm looking at Exhibit 1, and the first --

11 HEARING OFFICER DAVIS: What was it?

12 MR. MEIKLEJOHN: It's not Exhibit 1.

13 MS. BASTA: 28.

14 HEARING OFFICER DAVIS: The number's up here.

15 (Employer's E-28 marked.)

16 THE WITNESS: So I'm looking at Exhibit 28.

17 MR. CATALANO: Thank you.

18 HEARING OFFICER DAVIS: Thank you.

19 THE WITNESS: And the first --

20 BY MR. CATALANO:

21 Q You don't have to go through all of them. What are they?

22 A The first three -- the first four letters are admission
23 letters to one of our programs in -- for Master's degree -- for
24 Master of Arts degree. And the last letter is an admission
25 letter to a Master of Science degree in Economics.

1 MR. CATALANO: I offer it.

2 HEARING OFFICER DAVIS: Any objection?

3 MR. MEIKLEJOHN: I have no objection. Should we just
4 identify so we all have the same numbers, which is --

5 HEARING OFFICER DAVIS: Yeah. I mean, he's talking about
6 this document is Employer 28.

7 MR. MEIKLEJOHN: Right.

8 HEARING OFFICER DAVIS: I think it's comprised of --

9 MR. MEIKLEJOHN: Of all five letters.

10 HEARING OFFICER DAVIS: Yes.

11 MR. MEIKLEJOHN: And the first one is -- oh, you got the
12 order?

13 MS. ROTHGEB: Yeah.

14 MR. MEIKLEJOHN: Okay. All right. No objection.

15 HEARING OFFICER DAVIS: Okay, thank you.

16 Employer 28 is admitted.

17 (Employer's E-28 received.)

18 BY MR. CATALANO:

19 Q Okay, and assume this person -- these persons joined your
20 Master of Arts and Master of Science program, and then he or
21 she thereafter went on to obtain a Ph.D. degree, again, at The
22 New School; how many additional credits or how many underlying
23 credits ordinarily would be the case to obtain the Master's,
24 and then if he or she went on to get a Ph.D., how many
25 additional credits?

1 A As I stated, New York State requires all Master's degrees
2 in New York State to have 30 credits, so that's uniform. And
3 in our case, we have 6 doctoral programs that require 60
4 credits, inclusive of Master's degree or any earned at the
5 school or transferred into the school from a previous Master's
6 obtained at a different university.

7 And in clinical psychology, which is governed by
8 accrediting agencies and American Psychological Association,
9 the requirement is for 90 credits, inclusive of Master's
10 credits.

11 Q Okay. And an MS in economics, is there any variation here
12 as far as the credit requirements?

13 A Yes. The Master of Science in Economics requires 45
14 credits.

15 Q Okay. And if he or she were to obtain the Ph.D., would he
16 or she need an additional 45, 30, what is it? If you know.

17 A Yes. It would require at least 15 more credits for the
18 Ph.D. in economics. In some cases, if the Master of Science
19 student did not take all the distributed credits in all the
20 fields that need to be covered for the Ph.D., that require --
21 that requirement may be higher than 15. But generally it's 15
22 or slightly higher.

23 Q Thank you.

24 Okay, what period -- over what period of time, generally
25 speaking, is a Master's degree attained by a student? And then

1 compare that to the length of time or the duration for the
2 attainment of a Ph.D. And I understand, I think we all
3 understand there can be variations based on any number of
4 factors, but generally speaking.

5 A Generally speaking, it takes two years to obtain a Master
6 of Arts degree. In some cases, that period is extended. We
7 have an academic policy that calls for completion of a Master's
8 degree -- Master of Arts degree in no more than five years.
9 But generally speaking, most students obtain it in two years.

10 I believe our average time to degree in the doctoral
11 program is eight years. Minority of students, inclusive of the
12 Master's program, a minority of students obtain it in a period
13 between five to seven years. And the minority of students
14 obtain it in a period longer than eight years. The term
15 limits, according to our academic policy is ten years, but we
16 do make exceptions for students who need longer.

17 (Employer's E-29 marked.)

18 BY MR. CATALANO:

19 Q Okay, and is there, as you have with the Exhibit 29, a
20 template form, letter of acceptance for Ph.D. program?

21 A I am looking at Exhibit 29, which is an e-mail letter of
22 acceptance to the Ph.D. program in politics for a student who
23 completed an MA degree in politics at The New School for Social
24 Research.

25 Q Okay.

1 MR. CATALANO: I offer it.

2 HEARING OFFICER DAVIS: Any objection to 29?

3 MR. MEIKLEJOHN: No objection.

4 HEARING OFFICER DAVIS: Employer's 29 is admitted.

5 (Employer's E-29 received.)

6 BY MR. CATALANO:

7 Q Okay, now as a graduate student at NSSR, has there ever
8 come a time that an individual would receive financial aid or
9 assistance?

10 A Yes.

11 Q Okay. And can that assistance be in the -- any number of
12 forms? Or is there only one form of financial aid?

13 A There are several forms of financial aid at The New School
14 for Social Research.

15 Q Okay.

16 A And they are -- they include tuition scholarships,
17 fellowship stipends, teaching or research assistantships,
18 teaching fellows, although they are not offered by the School,
19 they're offered by undergraduate division.

20 Q Approximately what percentage of the graduate students at
21 NSSR -- now, counsel will agree that the punitive unit is
22 research assistants, research associates, course assistants,
23 tutors, teaching assistants, and teaching fellows.

24 Irrespective of whether all of those categories exist in the
25 NSSR, can you tell us what percentage of the individuals who

1 serve in those six categories receive some form of financial
2 assistance?

3 A Based on my examining a study that was requested as part
4 of this hearing, I think 50 percent would be a fair estimate of
5 NSSR students who receive one of those forms of financial aid.

6 Q So there would be a number of Ph.D. students, as an
7 example, who would receive "no financial aid," is that what
8 you're saying?

9 A Yes.

10 Q If I understand. Thank you.

11 Okay, now, Dr. Sanger testified the other day that while
12 there was an increase in the number of Ph.D. students over the
13 years, and I'm not sure exactly what the number of years was by
14 recollection, I think she didn't know, and then it, kind of,
15 leveled off or stayed the same. Can you tell us whether that
16 assessment is accurate in your view? As far as Ph.D. students
17 in the main. I'm not talking about what roles they assume,
18 just the number of Ph.D. students.

19 A Could you restate what Dr. Sanger testified?

20 Q Well, she said that over some discrete period of time, and
21 I don't have a transcript yet, that the number of Ph.D.
22 students graduated, and then, kind of, leveled off, but we
23 didn't get into the specificity. So I just would like your
24 assessment of -- or your recollection as to the number of Ph.D.
25 students at NSSR over the years, and where it is now compared

1 to a year or two ago. Has it leveled off as so stated?

2 A I wouldn't say that the number, say, in the period of 17
3 years that I've been at the school has come down and then up
4 again; it gradually came down throughout that period.

5 Q Okay. Now, contrary to that result, can you tell us
6 whether The New School took efforts in order to increase the
7 number of research assistants, one of the punitive categories,
8 by providing them more financial aid over the last number of
9 years?

10 A At The New School for Social Research the number and the
11 amount of that support has remained steady. Over this period,
12 maybe it increased slightly and incrementally. But the
13 University, as a whole, saw an expansion of these opportunities
14 in the past five years. There was a change of leadership in
15 the Provost, and I believe that the overall number of
16 opportunities doubled in the period of the last five years.

17 Q The number of research assistants? Or research
18 associates? Or persons receiving financial aid in those
19 categories?

20 A Persons receiving financial aid in those categories.

21 Q Okay. And numbers have been bandied about here, \$4100,
22 \$5100. Exhibit 7 you can see an aggregate of \$5100 being
23 provided to certain research assistants over the course of an
24 academic year. Is that the financial aid that you're referring
25 to?

1 A That's the financial aid I'm referring to. Although, that
2 amount varies --

3 Q Yes.

4 A -- by recipient.

5 Q I'm just talking about form of financial aid, without
6 regard to specifics, right.

7 A Correct.

8 Q Okay. So -- so is it accurate to say that financial aid
9 has been the recent earmark or hallmark of what the academic
10 offices have chosen to do in order to increase financial aid to
11 research assistants, as an example, throughout the University?
12 Is that fair?

13 A That is a fair statement.

14 Q Okay. And is that \$5100, \$4100, whatever the case may be,
15 received in the form of a stipend to that graduate student when
16 serving in a particular role?

17 A Yes, it is.

18 Q Okay. And what are -- what is that role? Or could it be?
19 Or what is it? Not what --

20 A Which category of the six that you listed are you
21 referring to?

22 Q I'm asking, what are you referring to? I'm on the happy
23 position of asking questions. So you tell us, the \$5100, the
24 \$4100, whom is it provided to? Which categories? There are
25 RAs, research associates, TAs, TFs, course assistants, and

1 tutors.

2 A Right. So --

3 HEARING OFFICER DAVIS: Hold on. Sorry.

4 Did you have an objection?

5 MR. CATALANO: Those are the six that -- we can pull it
6 out.

7 MR. MEIKLEJOHN: Well, we --

8 MR. CATALANO: You know whom you're seeking to represent,
9 I don't, but I think it's those six.

10 MS. ROTHGEB: Student associate in that --

11 HEARING OFFICER DAVIS: Those were the courses --

12 MR. CATALANO: But those --

13 MS. ROTHGEB: -- as a subset of research assistants.

14 MR. CATALANO: But the -- we have conceded that they're
15 referred to --

16 MS. ROTHGEB: To as research assistants.

17 MR. CATALANO: -- research assistants, yes.

18 HEARING OFFICER DAVIS: You can clarify that on your
19 direct.

20 THE WITNESS: So, at the NSSR, there research assistants,
21 teaching assistants, and research associates. There are no
22 course assistants, and there are no tutors, and there are no --
23 the category --

24 BY MR. CATALANO:

25 Q Teaching fellows.

1 A There are no teaching fellows.

2 Q Okay. So you referred to three categories referred to in
3 the petition. And in each of those categories, do students, if
4 they have served in those roles, have they received these
5 stipends?

6 A Yes, they did.

7 Q Okay. And are currently?

8 A Yes, they did.

9 Q All right, thank you.

10 Now, tell, in your own words, however short or prolix you
11 want to be, what's the purpose of providing these students with
12 this -- with these dollars, these forms of financial aid?
13 What's the intent? And has it been discussed at meetings and
14 the like, so that you know from your personal experience what
15 the intent is in both the University and NSSR?

16 A There is a dual intent and dual purpose to all of these
17 opportunities, for creating all of these opportunities. They
18 are a form of financial aid that supports students in their
19 attainment of Master's or Ph.D. degree. And it's an integral
20 part of the academic mission of the school in providing those
21 degrees. And it varies by faction.

22 So in case of teaching assistant -- and I can speak to
23 teaching fellows, although they do not act in those positions
24 at The New School for Social Research, but I'm familiar enough
25 with --

1 Q Why don't you go through and do so.

2 A -- with what they do.

3 Q As long as you have personal experience and knowledge,
4 please do so.

5 A So in the case of these two categories, the training is
6 for a future role as a faculty member. You can read all the
7 great books, but if you are not given an opportunity to teach
8 the material that you're creating original knowledge in, you
9 are not fully prepared for the future roles that they
10 attainment of that degree is going to provide.

11 In case of research assistants and research associates,
12 you immerse yourself in what scholars are supposed to do. So
13 you immerse yourself in original research, and you prepare
14 yourself, thus, for your future role as a researcher. And
15 these are integral to attainment of a doctoral degree for sure.

16 Q Okay. And based on the discussions and the knowledge that
17 you are aware of, tell us whether you believe that the
18 interchange of ideas with either students or other faculty
19 members, including a mentor, is important to the attainment of
20 a degree?

21 A It's one of the key components of the attainment of the
22 degree. We advise all entering students to establish
23 relationships with the faculty when they first join the
24 program, and to serve as a TA, TF, or RA or research associate,
25 is the -- as close as you can get to a meaningful

1 mentorship/relationship with your faculty.

2 Q Okay. Now, based upon your awareness of the research
3 institutions, such as the Yale's, Stamford's, and Harvard's,
4 and Brown's, and NYU, and Columbia, do you have the same luxury
5 as they do as far as resources in order to assist in that
6 mission?

7 A No, we don't.

8 Q Okay. Do you take any steps to try and disburse these
9 forms of financial aid to as many as is possible? Do you
10 attempt to do that?

11 A We do attempt to do that. And we are constantly trying to
12 increase the resources and expand the existing programs.

13 Q Okay.

14 (Employer's E-30 marked.)

15 BY MR. CATALANO:

16 Q Now, is there -- and this is just a procedural matter --
17 is there an announcement as to how one might attain one of
18 these roles? And if you wouldn't mind, take a look at
19 hopefully that which has been marked as 30.

20 A I'm looking at Exhibit 30, and it is an e-mail
21 announcement to all graduate students at The New School for
22 Social Research announcing applications for positions as
23 teaching assistant in NSSR courses or as research assistant for
24 NSSR faculty, as well as teaching assistant in undergraduate
25 courses.

1 MR. CATALANO: I offer it.

2 HEARING OFFICER DAVIS: Any objection?

3 MS. ROTHGEB: That's just the first page, right?

4 MR. MEIKLEJOHN: Is this a four-page document?

5 HEARING OFFICER DAVIS: It's -- yes.

6 MR. CATALANO: Well, it's four pages that we put together.

7 The question for the Witness --

8 MS. ROTHGEB: He just identified the first page.

9 MR. CATALANO: Yeah.

10 MS. ROTHGEB: But you're offering the whole exhibit.

11 BY MR. CATALANO:

12 Q Can you tell us, Mr. Kostrzewa, whether the balance of

13 those documents --

14 A So the Exhibit 30 also includes an application for -- used

15 by The New School for Social Research for students to apply to

16 the positions available at The New School for Social Research.

17 And it's downloaded from a link called "Application" on the --

18 on Page Number 1.

19 HEARING OFFICER DAVIS: Any objection?

20 MR. MEIKLEJOHN: No objection.

21 HEARING OFFICER DAVIS: Employer 30 is admitted.

22 (Employer's E-30 received.)

23 BY MR. CATALANO:

24 Q Now, when -- assuming one of these roles, and let's stay

25 with teaching assistant here or research assistant here, if one

1 were to receive, as an example, a \$5100 stipend, broken down or
2 *in toto*, for one semester or two semesters, if that person
3 performs in that role for a varying number of hours, does the
4 stipend amount modify?

5 A No, the stipend amount stays the same.

6 Q Let's talk about in serving in those roles. First is
7 there a relationship between the student -- the graduate
8 student serving in one of the roles and a faculty member?

9 A There is always a relationship between the student serving
10 in one of those roles and the faculty member.

11 Q And if you could detail in greater fashion what that role
12 is? Or what's -- what are the benchmarks and earmarks and
13 ingredients of serving in those roles and the relationship
14 between the two? That is to say mentor/mentee, if one exists.

15 A So let's take the role of teaching assistant, first. The
16 role involves assisting the faculty member who is teaching the
17 course, as we call it, who is the instructor of record, to
18 perform all of the necessary -- that are involved in teaching a
19 course.

20 What that usually -- not always, but generally, what that
21 amounts to is attending the lecture or seminar that the faculty
22 of record is offering. And then conducting in-depth
23 discussions with students who are taking the course, to cover
24 the same material that was covered in the lecture or seminar,
25 in much greater depth, and ensuring that everybody understands

1 the material. That involves usually weekly consultations
2 between the teaching assistant and the faculty of record.

3 Q Who has the final say, as an example, with respect to that
4 which is taught, as far as grading or -- and the like? Who
5 ultimately makes those decisions?

6 A The final determination as to the curriculum itself, the
7 syllabus and the grading, is the faculties.

8 To take a --

9 Q Yeah, go ahead, please.

10 A To take the example of research assistants and research
11 associates, there's more variation in what they do and what
12 relationship between the student assistant and the faculty
13 entails. It varies by discipline. It varies by individual
14 faculty. It varies by the nature of the discipline and the
15 topic that is being researched.

16 Q Can you tell us whether --

17 A In the psychology lab, for example, it may involve
18 studying human subjects.

19 In economics, research team, it involves often analyzing
20 large data sets provided by national, international
21 organizations, and running studies to -- on that data set.

22 In anthropology, it may involve conducting interviews with
23 human subjects.

24 In philosophy, it may involve studying archival material
25 or translating original texts.

1 Q Irrespective of the discipline, however, can you tell us
2 whether you are aware that the faculty member and the graduate
3 student interchange repeatedly, often, not often? What's the
4 relationship, as far as timing and direction?

5 A So the time that -- and the frequency that the faculty
6 member spends with the research assistant or associate varies
7 by individual, again. Sometimes it's constant. If it involves
8 experimental research and observation, both the faculty and the
9 assistant are present at those times. Sometimes it's daily.
10 Sometimes it's weekly. It very much depends on the research
11 product, the subject matter.

12 Q Thank you.

13 (Employer's E-31 marked.)

14 BY MR. CATALANO:

15 Q Take a look at 31 and just tell the Hearing Officer and
16 counsel what this is.

17 A I'm looking at Exhibit 31, and the first page is an
18 appointment letter for -- issued to a student who is going to
19 act in a teaching assistant role, in a specific course called
20 Classical Sociological Theory. And that is two-page letter.

21 The next page is an appointment letter in the politics
22 department, to a student who will act as research assistant for
23 one of the faculty members in politics. And that has also two
24 pages.

25 The next one is an appointment letter issued by the

1 director of one of the research centers of the school,
2 appointing someone to the role of research assistant.

3 MR. CATALANO: I offer it.

4 THE WITNESS: The next --

5 BY MR. CATALANO:

6 Q Pardon me. Pardon me. What --

7 A The next one is, again, an appointment letter issued to a
8 student who will act as research assistant for one of the
9 psychology faculty.

10 HEARING OFFICER DAVIS: Any objection?

11 MR. MEIKLEJOHN: No objection.

12 HEARING OFFICER DAVIS: Okay, Employer's Exhibit 31 is
13 admitted.

14 (Employer's E-31 received.)

15 BY MR. CATALANO:

16 Q Now, in order to become a research assistant, must you
17 be -- or in fact, any of these roles, are they postgraduate --
18 or must you have enroll as a student? Must you be enrolled as
19 a student or graduate student?

20 A It's the first and necessary condition to be offered any
21 of these roles.

22 In addition, The New School for Social Research does not
23 allow non-New School for Social Research students to hold these
24 positions that we offer at the school. So we reserve it for
25 The New School for Social Research students.

1 Q In passing upon the features of being a research
2 assistant, depending on the discipline, you noted certain roles
3 that the student might undertake. Can you tell us whether in
4 acting as a research associate or research assistant, that that
5 discipline might be connected either intricately with his or
6 her effort to attain a dissertation, or whether it does not?

7 A When students apply to these opportunities, they declare
8 which faculty member they would like to be associated with;
9 which faculty member they would like to enter into a deeper
10 mentoring relationship with.

11 In some departments, there are clusters of students who
12 work with specific faculty member. We call them often "labs"
13 or "research teams." And we hope that in all cases, but
14 certainly in most cases, that research that is being conducted
15 benefits both parties; the faculty research leader/mentor and
16 the student who is on that research team. And in fact, we have
17 many examples of very successful relationships of that nature,
18 which produce original research, so they enlarge original
19 knowledge, which produce outcomes, tangible outcomes such as
20 publications. And in some disciplines, it's a courtesy to, in
21 a jointly authored article, to list the student research
22 assistant or research associate as number one author of that
23 article. And it often appears in prestigious scholarly
24 journals, which then is a great asset to the student being able
25 to list that publication on their CV when they are attain the

1 degree, they can then go out there and look for a job.

2 Q I'm sorry if you answered another feature from that
3 question, does there come a time that these students us that
4 research in the attainment of or in the preparation of their
5 dissertation? Pardon me if I overlooked that part of your
6 answer. So if you don't mind repeating it if you said it, and
7 if not, pardon me for not asking.

8 A The research project, often grants and foundations of
9 individual dissertations, you could say that in many cases the
10 research that the doctoral dissertation thesis is a spinoff of
11 a larger project that is conducted by a research team or a lab.
12 So yes, it's very often the case that the original research
13 that the student engages in and the mentorship with that
14 faculty member is the foundation of the dissertation.

15 Q Thank you.

16 (Employer's E-32 marked.)

17 BY MR. CATALANO:

18 Q Now, if you don't mind taking a look at this compilation
19 of pages.

20 A Yes.

21 Q Please advise us what this relates to.

22 A I'm looking at Exhibit 32. Exhibit 30 was an announcement
23 and application form for students to apply to these roles at
24 NSSR. Exhibit 32 is a table with all the applications received
25 for this specific period from students who wish to act in these

1 roles, research assistant and teaching assistant, at The New
2 School for Social Research. So it's a downloaded table with
3 all the applications received.

4 MR. CATALANO: I offer it.

5 HEARING OFFICER DAVIS: Any objection to Employer 32?

6 MR. MEIKLEJOHN: Just a couple quick questions.

7 VOIR DIRE EXAMINATION

8 BY MR. MEIKLEJOHN:

9 Q What period of time does the -- this chart cover?

10 A These are applications for the opportunities announced for
11 the academic year 2015-16, I believe.

12 Q For both semesters?

13 A Yeah.

14 MR. MEIKLEJOHN: No objection.

15 HEARING OFFICER DAVIS: Employer 32 is admitted.

16 (Employer's E-32 received.)

17 CONTINUED DIRECT EXAMINATION

18 BY MR. CATALANO:

19 Q There has been some discussion, albeit briefly, about
20 external grants and grant funding. Can you tell us whether
21 that concept is engaged in at NSSR? And describe it for the
22 Hearing Officer in brief.

23 A Although we are disadvantaged as a graduate school in not
24 having fields that are traditionally strong candidates for
25 external funding, such as natural sciences, medicine, we still

1 do engage in applying and successfully obtaining external
2 funding, whether it's from the federal government or private
3 sources, mainly private foundations.

4 In most cases, these are individual applications by
5 faculty members to the funding agency, which is then
6 administered, if the grant is successful, they are administered
7 by the University, at the school.

8 (Employer's E-33 marked.)

9 BY MR. CATALANO:

10 Q Okay, I'm going to show you a document, which may have
11 been pre-marked as 33.

12 A I'm looking at Exhibit 33, which is a summary of the
13 proposal to the National Science Foundation, from The New
14 School, for a project, judging by the title, submitted by one
15 of the faculty members who work in the area of memory. So it
16 must be psychology department, which I think it is.

17 MR. CATALANO: I would offer it.

18 HEARING OFFICER DAVIS: Any objection to 33?

19 MR. MEIKLEJOHN: I have -- yes, I do have some Voir Dire.

20 HEARING OFFICER DAVIS: Okay.

21 VOIR DIRE EXAMINATION

22 BY MR. MEIKLEJOHN:

23 Q These are selected excerpts from the grant proposal --
24 well, strike.

25 Do these all come from the proposal?

1 A Yes, these are -- this is -- the first two pages refer to
2 an application to the National Science Foundation from William
3 Hurst, who is a faculty member -- no, I'm sorry; maybe all of
4 it is about -- no, no. No, it's all about the same grant
5 proposal.

6 Q Okay. Now --

7 A So these are excerpts from a proposal submitted by a
8 member of the faculty in psychology, that include
9 justifications for engaging student research assistant as part
10 of the grant.

11 Q Okay. But the -- well, the first four pages are excerpts
12 from the grant proposal; is that right?

13 A Right.

14 Q And there are other pages, sort of, that would be
15 interspersed within this document?

16 A The last --

17 Q No, before --

18 A -- page is blank. The last two -- the note on the pages
19 seems to be guideline -- copies of guidelines from the National
20 Science Foundation.

21 Q Right. But go back to the first four pages.

22 A Yes.

23 Q Okay. There are -- there are other pages to the grant
24 proposal; is that correct?

25 A Yes. I'm sure this is not a complete grant proposal.

1 Q Okay. So --

2 MR. CATALANO: I'll be happy to give you --

3 MR. MEIKLEJOHN: I would like --

4 MR. CATALANO: -- the complete grant proposal.

5 MR. MEIKLEJOHN: -- to see the complete proposal.

6 MR. CATALANO: That's fair.

7 MR. MEIKLEJOHN: And any response from the NSF.

8 MR. CATALANO: Sure.

9 BY MR. CATALANO:

10 Q But, and then the last few pages, I think you identified,
11 are excerpts from?

12 A National Science Foundation guidelines.

13 Q Right. Something published by the federal government?

14 MR. CATALANO: Do you want to make that a separate?

15 MR. MEIKLEJOHN: No, I don't care.

16 MR. CATALANO: Okay.

17 MR. MEIKLEJOHN: Well, may -- we'll, I'll ask the Hearing
18 Officer.

19 Do you think it would be easier to make separate those? I
20 think he may be right.

21 HEARING OFFICER DAVIS: Yeah. Because I think they're
22 separate. They should be. Unless they are part of the
23 proposal, I think they should be separate documents.

24 MR. CATALANO: That's fine with me.

25 HEARING OFFICER DAVIS: Okay. So we're going to -- the

1 face of the grant proposal will still remain as Employer 33.

2 And the page beginning with --

3 MR. MEIKLEJOHN: OMBA21.

4 HEARING OFFICER DAVIS: Yeah. That should be a separate
5 document, so let's make that Employer 34.

6 MS. ROTHGEB: He's already marked other things as 34.

7 HEARING OFFICER DAVIS: That's okay. You'll have to
8 change the numbers.

9 (Employer's E-34 marked.)

10 HEARING OFFICER DAVIS: Now, I do have a slight question,
11 and it's just technical one. I'm going to admit 33, and 34,
12 but 33 contingent on, you know, your review of the original
13 document and all its constituent parts.

14 But Page 2 of Document 33 has a different number at the
15 bottom than the grant proposal number. So if you see it's
16 1427 -- 1423751, and the original and the other pages in the
17 document, 1423727. Can you explain that number, why that's
18 different?

19 THE WITNESS: I was not the one who prepared this
20 document, but obviously there is a discrepancy.

21 HEARING OFFICER (Employer's E- received.): Okay.

22 MR. CATALANO: We'll find out.

23 HEARING OFFICER (Employer's E- received.): All right. So
24 we need to fix 33. I'm going to admit 34. And I'm going to
25 hold off, actually, on admitting 33 because it needs to be --

1 we need to fix that, okay?

2 MR. CATALANO: That's fine.

3 HEARING OFFICER DAVIS: All right, so 34 is admitted, and
4 33 I'm reserving.

5 (Employer's E-34 received.)

6 CONTINUED DIRECT EXAMINATION

7 BY MR. CATALANO:

8 Q All right, now speaking to the issue of grant proposals
9 and the U.S. Government, which is in 34, are there requirements
10 and/or features attributable to the grant proposal that inure
11 to the benefit to the student?

12 A Yes. From the perspective of the school, it's very
13 important that as many faculty members as possible apply and
14 obtain external funding from either federal or private
15 agencies, because the research assistant or associate positions
16 that can be accommodated in those grant proposals constitute
17 very much needed sources of support for graduate students at
18 the school.

19 Q And is that specifically referred to in 34 --

20 A Yes.

21 Q -- as an intent of both the requirements of the
22 government, as well as in this instance your intent?

23 A Yes.

24 Q Okay. Okay, now there has -- finally, some testimony --
25 oh, not "finally," the almost final. Take a look at these two

1 documents called the Schwartz Doctoral Fellowships In First
2 Retirement Equity Studies at The New School for Social
3 Research, and I think that there are two models, as counsel and
4 I spoke about before, as far as the first paragraph.

5 MR. CATALANO: Is it, Nichole?

6 MS. ROTHGEB: There's two different documents.

7 MR. CATALANO: Yes. Yes.

8 MS. ROTHGEB: Have they been marked separately?

9 BY MR. CATALANO:

10 Q Okay, and do you have --

11 A One's marked 34, one's marked 35.

12 Q Well, it should --

13 HEARING OFFICER DAVIS: Let's go off the record.

14 (Whereupon, a brief recess was taken.)

15 HEARING OFFICER DAVIS: Back on the record.

16 DIRECT EXAMINATION (continued)

17 BY MR. CATALANO:

18 Q Before we get to 35 and 36, I want to revert back to
19 something you had said before, which is that you try to
20 disburse funds, "you" being NSSR, to as many persons as is
21 possible. Can you tell us whether the recurrence of role is
22 impacted by that? In other words, what's the expectation or
23 the desire of The New School as far as broad basing the
24 financial aid? Is there an expectation by students that they
25 will continue to serve in a particular role as a research

1 assistant, research fellow, and the like? Is there any
2 expectation?

3 A The opportunities generally are offered for one to two
4 semesters. We -- every spring we make announcements about
5 those opportunities and we, together with faculty, select the
6 candidates for these opportunities. So there's no expectation
7 that they will continue.

8 Q Okay. And there's --

9 A With --

10 Q -- no indication --

11 A With some -- with some exceptions, all right.

12 Q There is no indication, is there, however as a general
13 proposition that he or she will serve in those roles beyond, as
14 an example, one or two semesters --

15 A No.

16 Q -- is there?

17 A No.

18 Q Okay.

19 (Employer's E-35 and E-36 marked.)

20 BY MR. CATALANO:

21 Q Now, let's get back to Numbers 35 and 36. Can you
22 identify them for the Hearing Officer?

23 A So Exhibit 35 is an announcement of a new opportunity that
24 is starting in the forthcoming academic year, 2015-2016, and
25 it's a doctoral fellowship in retirement equity studies,

1 offered by the Schwartz Center for Economic Policy Analysis,
2 which is a research center at NSSR, aligned with the economics
3 department.

4 Q Thank you.

5 MR. CATALANO: I offer them.

6 HEARING OFFICER DAVIS: Any objections to 35 and 36? Or
7 is that just 35?

8 THE WITNESS: Exhibit 36 is an announcement of a brand new
9 opportunity that is starting the 2015-2016 academic year of a
10 doctoral fellowship in ancient studies in the Greek Thought,
11 Political Theory, History, Poetry, offered by the department of
12 philosophy, with the funding from the Onassis Foundation.

13 HEARING OFFICER DAVIS: Thank you.

14 MR. CATALANO: I offer them.

15 MR. MEIKLEJOHN: I just -- I have a -- I think the --
16 well, I think this question goes to the relevance of the
17 document. I will ask it, if there's no objection?

18 VOIR DIRE EXAMINATION

19 BY MR. MEIKLEJOHN:

20 Q With respect to 35 or 36, the individuals selected for
21 these fellowships, would they be -- become a research assistant
22 or a research associate or any of the other positions we're
23 talking about?

24 A They would.

25 Q What position would they come into?

1 A They would come into any of these positions that is not
2 yet determined at this time.

3 HEARING OFFICER DAVIS: Well, there's a --

4 THE WITNESS: I'm sorry, in Exhibit -- referring to
5 Exhibit 35, they would only come into research position.

6 Regarding Exhibit 36, they could potentially come into a
7 teaching assistantships, as well.

8 MR. MEIKLEJOHN: Okay. No objection.

9 HEARING OFFICER DAVIS: Okay, just for the record, the
10 document in Paragraph 4 on Employer 35 refers to research
11 assistant position. The same paragraph on 36 refers to either
12 a possibility as a research assistant, teaching assistant, or
13 teaching fellow, which I think was really the question.

14 So 35 and 36 are admitted.

15 (Employer's E-34 and E-36 received.)

16 MR. CATALANO: I have nothing else now.

17 HEARING OFFICER DAVIS: Do you want to start your cross?
18 Do you need time? Should we break for lunch?

19 Let's go off the record.

20 (Whereupon, a brief recess was taken.)

21 HEARING OFFICER DAVIS: Back on the record.

22 Every exhibit in this hearing has been admitted, except
23 33, and that's just -- we're just reserving that for a second.

24 Okay, Mr. Meiklejohn.

25 MR. MEIKLEJOHN: Thank you.

CROSS-EXAMINATION

1

2 BY MR. MEIKLEJOHN:

3 Q Good afternoon, Dean Kostrzewa. How did I do? Is that
4 decent?

5 A Good.

6 Q You testified that you started with The New School as an
7 assistant dean -- no, in 1998 as the director of scholarships
8 and student funding; is that the position?

9 A Correct.

10 Q And when you started working for The New School, did you
11 have a mentor in your capacity as an employee? Somebody you
12 considered a mentor?

13 A When I started?

14 Q Yes.

15 A I had a supervisor.

16 Q Well, did you feel you had a mentorship relationship with
17 that supervisor? I'm not going to ask for names or details
18 about the relationship, I promise.

19 A Not particularly. No.

20 Q During the time that you have worked there, have you
21 developed a mentorship relationship with -- or during your
22 early years, did you develop a mentorship relationship with
23 anyone?

24 A I have close friends on the faculty, and some of them are
25 the age of my father, so in those cases perhaps I look up to

1 them in a similar way as I look up to my father. So, yes, I
2 would call them mentors.

3 Q And you feel they helped you -- that some of those
4 individuals helped you in your career?

5 A Of course.

6 Q Provided support?

7 A Of course.

8 Q Now, exhibit 28 is a -- I didn't do a very good of
9 organizing these. Exhibit 28 is -- are a collection of letters
10 indicating that -- or are offering admission to students for
11 positions as Master's students?

12 A Correct.

13 Q And I guess, 29 was similar, with respect to admissions to
14 Ph.D. candidates or studies?

15 A I -- I don't have Exhibit 29.

16 Q Okay. That's all right, we'll stick with -- I'll only ask
17 about 28 for the time being.

18 Admission as a student, either as a Master's student or as
19 a doctoral student, does not carry with it an automatic
20 appointment to a position as research assistant or a teaching
21 assistant or any of these other categories; correct?

22 A That is correct.

23 Q And in fact, to get any one of those positions, the
24 student has to go through a separate application process; is
25 that correct?

1 A That is correct.

2 Q And they can apply for these jobs online through a human
3 resources portal; is that correct?

4 A I can speak to the application process presently in place
5 at NSSR, and that is not correct.

6 Q In what way is it incorrect?

7 A The application announcement and management of
8 applications is done internally at the dean's office of The New
9 School for Social Research by an assistant dean who handles
10 that function.

11 Q Okay. Are the jobs posted -- are the positions posted in
12 more than one way? Are students notified of them in more than
13 one way?

14 A In the case of New School for Social Research, they are --
15 students are notified in an e-mail letter, announcement, with
16 the application form attached, with instructions to return
17 online application to the office of the dean at New School for
18 Social Research.

19 Q To -- I'm sorry, the word was the "online application"?

20 A Yes.

21 Q Okay. I'll get back to the process in a minute, when I
22 find the right papers.

23 But you testified that about 50 percent of the Ph.D.
24 students were placed in positions as research assistants or
25 teaching assistants or one of these other classifications?

1 A I testified that based on my reading of the data set that
2 was prepared for this hearing, I established that 50 percent of
3 all graduate students were offered these opportunities in the
4 period covered by the documentation that I inspected.

5 Q What period of time did that documentation cover?

6 A I believe it was calendar year 2014, the data set is the
7 title of that.

8 MR. CATALANO: Just so he knows, he's looking -- that's
9 between you and him.

10 MR. MEIKLEJOHN: He can't help you answer the questions.

11 HEARING OFFICER DAVIS: Okay.

12 BY MR. MEIKLEJOHN:

13 Q Well, let me ask you --

14 HEARING OFFICER DAVIS: Wait, wait, wait.

15 BY MR. MEIKLEJOHN:

16 Q -- during the course --

17 HEARING OFFICER DAVIS: Wait, hold on. I don't think he
18 completed his answer.

19 MR. MEIKLEJOHN: Oh, I'm sorry.

20 HEARING OFFICER DAVIS: You said the data set was 2014?

21 THE WITNESS: Yes. The one that I looked at.

22 HEARING OFFICER DAVIS: Okay. Just 2014.

23 I'm sorry, he did. Go on.

24 BY MR. MEIKLEJOHN:

25 Q I may get back to that. But are there Ph.D. students who

1 complete their entire Ph.D. studies without serving in any of
2 these positions?

3 A I don't know.

4 Q Is -- there's -- there's no -- that question is not
5 tracked centrally in any way?

6 A I don't know the answer to that question. But I'm sure
7 that it could be answered.

8 Q Okay. Just to clarify one aspect of your testimony, you
9 said that there are no teaching fellows in NSSF? NSSR, excuse
10 me.

11 A There are no teaching fellowships at The New School for
12 Social Research, but NSSR students are offered teaching
13 fellowships in other parts of the University.

14 Q So the duties are performed in other divisions of the
15 University?

16 A That is correct.

17 Q And primarily those are divisions that have undergraduate
18 students; is that correct?

19 A That is correct.

20 Q And the payment for those teaching fellows comes from the
21 budgets of the divisions where the work is being -- where the
22 services are being provided?

23 A I don't know.

24 Q You testified that the pay for an RA or other of these
25 individuals who are paid by way of stipend, that the amount

1 that they are paid does not vary depending on how many hours
2 they work per week?

3 A Correct.

4 Q Are you paid a salary?

5 A Excuse me?

6 Q Are you paid a salary?

7 A Am I, as an employee of the University, am I paid a
8 salary?

9 Q Yes.

10 A Yes, I am.

11 Q And does the amount of your salary vary depending upon how
12 many hours you work in a week?

13 A No.

14 MS. ROTHGEB: Hold on.

15 (Counsel confer.)

16 BY MR. MEIKLEJOHN:

17 Q There are some employee -- students in these categories --
18 tutors are paid hourly; correctly -- correct?

19 A I don't know.

20 Q You described the duties that some of the research
21 assistants -- or gave examples of duties that research
22 assistants might perform. You testified that a research
23 assistant in psychology might study human subjects?

24 A Correct.

25 Q And could you -- could you elaborate on what that would

1 entail? They would be working on a study that the -- a faculty
2 member is interested in?

3 A Correct.

4 Q And the faculty member would be -- would have, presumably,
5 would have some hypothesis about human psychology, I guess,
6 about people or how people behave or react. Something along
7 those lines?

8 A Yes. Although the full answer to the question is more
9 complicated.

10 Q Go ahead.

11 A Because as young scholars, this faculty member's graduate
12 students may also have their own hypothesis about the same
13 question or the same subject, and they are not shy to state
14 those hypotheses, and it's a collaborative interactive
15 relationship.

16 HEARING OFFICER DAVIS: I think what Mr. Meiklejohn may --
17 just to clarify the record, I think he wants to know what the
18 research assistants actually do, just to give some examples.
19 You did before, but --

20 THE WITNESS: So in a psychology lab, let's take an
21 example of an actual research -- an actual line of research in
22 the department, which is attachment of young children,
23 primarily toddlers, to their caregivers, primarily parents or
24 guardians. And it's a whole field, it's not just one project,
25 it's a whole field, and we do a lot of research at the school

1 on that -- in that field, on that subject. So a research would
2 take active part in preparing the child and the parents or
3 caregivers for an interview or an experimental interview that
4 is part of the study. Would be asking questions of parents and
5 of children. Would be making interventions that are designed
6 to test the level of attachment of that child to the parent or
7 caregiver. Would be analyzing data that results from those
8 observations and experiments. Would be participating in
9 formulating hypotheses about that data. Would be taking part
10 in drafting and then writing outcomes of that research for
11 scholarly publications. And as I indicated, would often appear
12 as the main author of such findings.

13 Q Well, you testified at one point that you -- the hope or
14 expectation is that the work of the research assistants would
15 benefit both the student and the faculty member.

16 A Correct.

17 Q Can you explain how the work of the student would benefit
18 the faculty member?

19 A Scholars need to test their assumptions and hypotheses all
20 the time, and graduate students provide a constant fresh
21 outlook at all the questions. And the mentoring relationship
22 that exists between the faculty and the student is the source
23 of discovery of new facts, new elements of an old problem that
24 the faculty may have studied for a number of years. The
25 analysis of existing data with a different outlook and a fresh

1 eye is always a benefit to the main principle investigator, as
2 we call the faculty member in charge of a lab or in charge of a
3 research team.

4 Q The research assistant would also be creating or
5 developing new data that the principle or that the faculty
6 member can utilize?

7 A Rather analyze. And both would be using that analysis.
8 The student who is being mentored would hopefully use it in
9 their dissertation.

10 Q And sometimes that happens and sometimes it doesn't?

11 A I cannot testify that it happens in every case, but I
12 would like to believe that it happens often in the majority of
13 cases.

14 Q Could you take a look at Employer Exhibit 31?

15 A I don't believe I have it.

16 Q It's the series of --

17 A Yeah, I see it.

18 Q And if you look at the first page, that's an appointment
19 letter to a teaching assistant in the sociology department?

20 A Correct.

21 Q And the second is an appointment to a research position in
22 the politics department?

23 A Correct.

24 Q And the sociology teaching assistant position pays a
25 stipend of 4125?

- 1 A Correct.
- 2 Q And the research assistant position pays \$5100?
- 3 A Correct.
- 4 Q Can you explain the difference in the pay?
- 5 A The pay for a teaching assistant seems to be higher,
6 although in absolutely dollars it is lower.
- 7 Q You're saying -- what -- you believe it's higher because
8 it's for only one semester? The teaching assistant gets 4125
9 and the research assistant gets the full 5100, right?
- 10 A Correct.
- 11 Q And so 5100 is higher, but that's for -- that's paid over
12 two semesters according to this; correct?
- 13 A Correct.
- 14 Q So is that what you mean when you say that the pay for the
15 teaching assistant is higher?
- 16 A Correct.
- 17 Q Okay. Because that's just for one semester?
- 18 A Correct.
- 19 Q And can you explain why the teaching assistant would get
20 paid a higher rate?
- 21 A Then?
- 22 Q Then the research assistant.
- 23 A It's a question of availability of resources. But it's
24 also recognized that teaching assistant is engaged in higher
25 level of expertise, skill, is given responsibility for --

1 In our case, teaching assistants are graduate students who
2 assistant in teaching undergraduate students. So teaching
3 assistant at NSSR, which is not the case if they are teaching
4 assistants at the college at the undergraduate program, is
5 explaining often-complicated material to his peer graduate
6 students. And it's often the case that the teaching assistant
7 has taken that course herself before and brings a different
8 wealth of skill and experience to the -- to that role.

9 Q So the reflects the responsibilities and the skills and
10 experience?

11 A It's -- the pay is a recognition of the set of skills and
12 experience that the person brings to that role.

13 Q You testified that if the student's research results in a
14 publication, that that can beneficial to the student down the
15 road in his or her career in landing a job; is that right?

16 A Yes, that -- that could be an important item on the CV,
17 yes.

18 Q Right. If the individual is fortunate enough to obtain a
19 tenured track position at a university, starting with an
20 assistant professor is the first stage in the tenure track?

21 A Usually is the first stage.

22 Q Right. A normal expectation of someone in a tenured -- in
23 an associate professor position, would be to continue
24 conducting research and continue publishing; is that right?

25 A That is correct.

1 Q And the pay that the assistant professor receives in that
2 capacity also -- or it is, in part, covers the time spent by
3 the assistant professor in developing that research and doing
4 his or her writing; is that correct?

5 A There are different ways of counting effort in
6 universities. There is a straightforward duty based count,
7 which The New School -- at The New School, as an institution --
8 Maybe I should speak of The New School for Social
9 Research's five courses, of which four are supposed to be
10 classroom-based courses. The fifth is a advising course in
11 recognition of the faculty's effort to advise Master's and
12 doctoral students, especially acting as chair or second or
13 third reader of the dissertations.

14 There are other ways of counting effort in universities.
15 One of those entails counting teaching as 60 percent of overall
16 effort of a faculty member, 20 percent providing service to the
17 institution, and 20 percent doing research on the project that
18 they engage in. But if you do not perform your duties
19 according to the first breakdown that I provided, you could be
20 fired. If you neglect your duties, voluntary duties as a
21 researcher, you cannot be fired.

22 Q But you are also likely to be denied the opportunity to
23 progress through the tenure track stages to associate professor
24 or full professor and achieve tenure if you have not succeeded
25 in publishing; is that correct?

1 A That -- the specific requirements to attain tenure are
2 different in different institutions. Some institutions do
3 grant tenure based on teaching alone. At The New School for
4 Social Research you are expected to show excellence in teaching
5 and creation of original knowledge. That's the description.

6 Q And the creation of original knowledge is reflected in
7 publication normally?

8 A It is often reflected through publications, but not
9 always.

10 Q And that is the norm at most universities, that at least
11 ones that -- I'll withdraw the question.

12 You offered some information about research grants. So
13 if -- and we have the excerpts from the grant proposal, which
14 is Exhibit 33, or maybe excerpts from two grants. Of course
15 this is not -- this was not in the record, so let me not ask
16 specifically about this one.

17 I think I can ask the question without being that
18 specific. You've got it?

19 A Yeah, I do have it.

20 Q So the faculty member in this case, Professor Hurst, has
21 applied for money from the, is it the, yeah, the National
22 Science Foundation.

23 A Correct.

24 Q And we can't tell from this whether the funding was
25 granted, but if it were granted that would result in some sum

1 of money being awarded by the United States Government;
2 correct?

3 A That would involve -- the entire funding for this
4 particular project coming from the United States Government.

5 Q And that funding, all of that funding would go to The New
6 School for use in Professor Hurst's research; correct?

7 A That is correct.

8 Q And that would include money to pay the salary of one or
9 more student research assistants; correct?

10 A Correct.

11 Q And would the grant also include a sum that can be used by
12 The New School to defray overhead costs?

13 A Correct.

14 Can I elaborate?

15 Q With great reluctance I'm going to say go ahead. Yes.

16 HEARING OFFICER DAVIS: If you won't say it, I will.

17 Go ahead.

18 THE WITNESS: Yes, we happened to pass a new policy that
19 governs the distribution of what's called indirect cost
20 recovery proceeds, and the University, in the spirit of
21 expanding support for both faculty and students, decided to
22 allocate 60 percent of each indirect cost recovery back to the
23 principle -- faculty principle investigator. And that the
24 direction that we received from the Provost is that most of
25 that, 60 percent portion of the recovery, should go back to

1 supporting additional student research assistants.

2 Q Okay. Just -- well, what happens to the other 40 percent?

3 A The other 40 -- 20 percent is kept by central
4 administration to provide administrative services to grant
5 recipients. And 20 percent will go to the dean of each school
6 for a variety of purposes. And our preliminary conversation is
7 that we will also allow some of that 20 percent to go back to
8 students in form of support for additional research assistants.

9 Q And the way that that indirect costs are awarded by the
10 government, is it's based on a percentage of the direct costs
11 as reflected in the grant proposal; is that right?

12 A I believe that the indirect cost recovery is a percentage
13 that is negotiated with government agencies. And I believe The
14 New School's percent is 60 -- between 61 and 63 percent. It's
15 not the highest, it's not the lowest in the land. And that --
16 those monies become available at the discretion of the receiving
17 institutions.

18 Q Okay. So the figure you gave was, I think, 63 percent?

19 A Yes. It's -- I think the percentage is derived --

20 Q I --

21 A -- from the salaries that the grant is paying to the
22 project personnel.

23 Q And that would include any postdocs doing research on the
24 project?

25 A That's correct.

1 Q And some portion of the faculty member's salary? Him or
2 her salary?

3 A That's correct.

4 Q And the salary of the graduate -- research assistant;
5 correct?

6 A I'm not entirely sure if research assistant stipend is
7 included in the cost recovery, but that can be checked easily.

8 Q Okay.

9 MR. MEIKLEJOHN: Well, I would appreciate it if there was
10 some follow-up on that. That's my understanding of how it
11 works.

12 BY MR. MEIKLEJOHN:

13 Q But that's something that's determined by the government
14 regulations; correct?

15 A That's correct.

16 Q Okay. And just to -- so that your explanation of what
17 this percentage means, if the included salary costs totaled,
18 say, \$100,000, and you have this 63 percent rate, how much
19 money then would be awarded for indirect costs?

20 A Sixty-three thousand.

21 Q So it's 63 percent on -- that's why I used 100,000, so the
22 arithmetic would be easy. But so it's 63 percent on top of the
23 eligible or included costs?

24 A Correct.

25 Q Okay. And so what we have to do is figure out what those

1 are.

2 If we look at Employer 34, that should be the last one.

3 MS. ROTHGEB: No.

4 THE WITNESS: No, 34 I think is the exhibit that --

5 MR. MEIKLEJOHN: Oh, no, there were --

6 THE WITNESS: -- that was not --

7 MR. MEIKLEJOHN: -- a couple after that, right. Those are
8 the O&B regs (ph).

9 HEARING OFFICER DAVIS: Which one do you want?

10 BY MR. MEIKLEJOHN:

11 Q Did you find 34?

12 A It does not exist.

13 MS. ROTHGEB: It does. The O&B -- it's the NSF guidelines
14 you referred to them as.

15 THE WITNESS: Okay.

16 HEARING OFFICER DAVIS: It's in there.

17 THE WITNESS: Okay, I have it.

18 BY MR. MEIKLEJOHN:

19 Q So if you look at 45(a)(1), it states that fellowship
20 student aid can be paid out of the grant only if (1) the
21 individual is conducting activities necessary to the sponsored
22 agreement.

23 A Correct.

24 Q That means the individual must be doing work related to
25 the grant proposal.

1 A Correct.

2 Q Okay. And that's the grant proposal which resulted
3 funds -- in funds being awarded to the University; correct?

4 A Correct.

5 Q And I'm not sure what Paragraph 4 -- oh, I guess I do.
6 Paragraph 4 -- subparagraph 4 requires that the compensation be
7 reasonable for the work performed.

8 HEARING OFFICER DAVIS: Are we just reading this document?

9 BY MR. MEIKLEJOHN:

10 Q You see what I'm referring to there?

11 A I see that you're referring to 45(4).

12 Q 45(a)(4), correct.

13 A (a)(4), sorry.

14 Q And in this case, it's referring to the work performed by,
15 again, referring to the work performed by the research
16 assistant on the sponsored grant.

17 A Correct.

18 Q And the compensation must be reasonable based upon the
19 amount -- or reasonably related to the amount of work
20 performed; is that what that means?

21 A That seems to be case. That's how I understand it.

22 Q And it's conditioned explicitly upon the performance of
23 necessary work. That means the grant can't be used to pay the
24 stipend unless the student actually does the work; correct?

25 A The student needs to act in that role, correct.

1 Q Okay.

2 MR. MEIKLEJOHN: Can we go off the record for a minute?

3 HEARING OFFICER DAVIS: Off the record.

4 (Whereupon, at 1:09 p.m., a luncheon recess was taken.)

5

1 do go through the human resources portal. Is that the
2 practice -- does that apply to people who are seeking positions
3 in other divisions of The New School, other than NNSR (*sic*)? If
4 you know.

5 A I don't know.

6 Q Okay. Now, the process you're describing relates solely
7 to NSR -- NSSR students applying for positions where they
8 perform their functions within NSSR?

9 A Correct.

10 Q Okay.

11 MR. MEIKLEJOHN: That's it.

12 HEARING OFFICER DAVIS: Okay, I have --

13 MR. MEIKLEJOHN: Wait, I'm sorry. Oh, well, I was going
14 to ask the Witness --

15 MR. CATALANO: I'm going to ask one on redirect, subject
16 to when the Hearing Officer wants to ask his question.

17 HEARING OFFICER DAVIS: Well, why don't you go first.

18 MR. CATALANO: Okay.

19 REDIRECT EXAMINATION

20 BY MR. CATALANO:

21 Q Okay, just to clarify the record, does there come a time
22 that a matriculating student, Ph.D. or Master's, at NSSR
23 applies for a teaching assistantship position in a different
24 division? Does that ever happen?

25 A It does.

1 Q Okay. And is that -- form a basis as to why wouldn't know
2 how many Ph.D. students at NSSR have or have not ever been
3 teaching assistant, because you don't know what transpires in
4 other divisions? Is that fair?

5 A That is fair. Although, subsequently I do see reports on
6 who those students are, subsequent.

7 Q Okay. Subsequent to the instance, but not --

8 A That's correct.

9 Q -- but not prior to their attainment of a position
10 elsewhere --

11 A That's correct.

12 Q -- is that true?

13 A That's true.

14 MR. CATALANO: All right, I have nothing else.

15 HEARING OFFICER DAVIS: Okay, I have a question. If I
16 understood your testimony, and this is with respect to teaching
17 assistants, research associates, and research assistants at The
18 New School for Social Research, I believe I heard you say that
19 50 percent of these persons were offered financial aid
20 opportunities in 2014, did I get that right? Is that what you
21 said?

22 THE WITNESS: What I said was that 50 percent of
23 matriculating students in NSSR were offered these positions in
24 the university, inclusive of NSSR in 2014.

25 HEARING OFFICER DAVIS: Oh, in the entire University. And

1 with respect to just NSSR, what percentage of those students
2 receive that type of aid?

3 THE WITNESS: Based on the offers that were -- that are
4 being made in response to the call for applications for 2015-
5 16, there are 76 teaching assistant positions that were
6 offered, and 76 research assistant positions that were offered.

7 In addition to that, there will be ad hoc announcements
8 of, I would say, 20 more opportunities between now and then.

9 HEARING OFFICER DAVIS: Okay. Are there any, and I don't
10 know if I have this right, but are there any candidates for
11 either the Master or doctorate degrees in The New School for
12 Social Research who have not had positions as research
13 assistants, teaching assistants, or teaching associates, if you
14 know?

15 THE WITNESS: My answer to that question was I don't know.
16 But I know how to find out.

17 HEARING OFFICER DAVIS: Okay. Okay, I missed that. Now,
18 my other question is with respect to persons who do those
19 functions, that is teaching assistants, research associates,
20 and research assistants, does NSSR have a method of tracking
21 the hours that they work? Sorry. Yeah, tracking the hours
22 that they devote to those activities?

23 THE WITNESS: We don't. We provide -- wrote guidelines as
24 to the hours, as to the effort measured in hours in the
25 appointment letters, whenever they exist. But the stipend is

1 requested as a payment over a period of time. We do not have
2 time sheets, and we do not monitor closely time effort.

3 HEARING OFFICER DAVIS: Thank you.

4 Any further questions, Mr. Catalano?

5 MR. CATALANO: Could you just hold on a second?

6 HEARING OFFICER DAVIS: Sure. Let's go off the record.

7 (Whereupon, a brief recess was taken.)

8 HEARING OFFICER DAVIS: Back on the record.

9 MR. MEIKLEJOHN: Can I ask some follow-up?

10 HEARING OFFICER DAVIS: So we're back on the record. Mr.
11 Catalano has no further questions; is that right?

12 MR. CATALANO: Yes.

13 HEARING OFFICER DAVIS: Okay, Mr. Meiklejohn.

14 RE-CROSS-EXAMINATION

15 BY MR. MEIKLEJOHN:

16 Q In response to several questions, both from -- I guess
17 from everybody here, but including the Hearing Officer's most
18 recent questions, you have referred to a study regarding the
19 percentage of students appointed RA and TA positions. So who
20 conducted that study?

21 A That study was conducted, do I know?

22 HEARING OFFICER DAVIS: I'm sorry?

23 THE WITNESS: I'm trying to figure out whether I know who
24 conducted the study. I guess HR conducted the study.

25 BY MR. MEIKLEJOHN:

1 Q And did you see -- did you see the actual study? Or just
2 were reported that this is the number?

3 A No, no, I saw the data set.

4 Q And also in response to the Hearing Officer's questions,
5 you said there were guidelines to measure the effort required
6 for different positions in terms of hours.

7 A No, the guidelines are contained in the appointment
8 letter.

9 Q Right.

10 A So this is the -- on the base of the answer to that
11 question.

12 Q And what is the purpose of establishing those guidelines
13 for measuring the effort?

14 A Because the -- what's at hand here is that students should
15 not be engaged in these roles for more than 20 hours a week.
16 It's a university accepted standard. I don't know whether it
17 actually appears in any regulations, but we try to abide by it.
18 And students and the University should know the effort that
19 they are engaged in in those roles, as opposed to other
20 activities on their path to attain the degree, because they
21 have a lot of other responsibilities as graduate students that
22 they have to meet. That's why academic institutions don't
23 allow students to engage in some of these efforts for more than
24 20 hours.

25 Q Okay.

1 MR. MEIKLEJOHN: Nothing further.

2 HEARING OFFICER DAVIS: Mr. Catalano?

3 MR. CATALANO: Nothing. I -- nothing further.

4 HEARING OFFICER DAVIS: Okay.

5 MR. CATALANO: Thank you.

6 HEARING OFFICER DAVIS: Thank you very much, you're
7 excused.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 MR. MEIKLEJOHN: Yeah, before everybody leaves I would
11 like to have a discussion off the record.

12 HEARING OFFICER DAVIS: Yeah, we'll have it off the
13 record.

14 Is there any other testimony today, Mr. Catalano?

15 MR. CATALANO: No.

16 HEARING OFFICER DAVIS: Okay.

17 MR. MEIKLEJOHN: So there's a --

18 HEARING OFFICER DAVIS: Wait, hold on.

19 MR. MEIKLEJOHN: I just wanted to --

20 HEARING OFFICER DAVIS: We're still on the record.

21 If there's nothing else, we'll be adjourned. Let's go off
22 the record.

23 (Whereupon, at 2:01 p.m., the hearing in the above-entitled
24 matter was adjourned *sine die*.)

C E R T I F I C A T E

This is to certify that the attached proceedings done before
the NATIONAL LABOR RELATIONS BOARD REGION TWO

In the Matter of:

THE NEW SCHOOL,

Employer,

and

STUDENT EMPLOYEES AT THE NEW SCHOOL - SENS AUW,

Petitioner.

Case No.: 2-RC-143009

Date: Thursday, April 23, 2015

Place: New York, New York

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

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