UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK	Employer	
and		Case No. 02-RC-143012
GRADUATE WORKERS OF COLUMBIA-GWC, UAW	Petitioner	

SUPPLEMENTAL DECISION ON OBJECTIONS AND NOTICE OF HEARING

On December 17, 2014, Graduate Workers of Columbia-GWC-UAW, herein called the Petitioner or the Union, filed a petition seeking to represent certain employees employed by The Trustees of Columbia University in the City of New York, herein called the Employer.

Pursuant to a Supplemental Decision and Direction of Election,[1] issued by the Regional Director of Region 2 on October 31, 2016,[2] an election by secret ballot was conducted on December 7 and 8, among the employees in the following unit:

> All student employees who provide instructional services, including graduate and undergraduate Teaching Assistants (Teaching Assistants, Teaching Fellows, Preceptors, Course Assistants, Readers, and Graders): All Graduate Research Assistants (including those compensated through Training Grants) and All

[1] As noted, the Petition was filed on December 17, 2014. On February 6, 2015, the Regional Director for Region 2 dismissed the petition, citing Brown University, 342 NLRB 483 (2004), which held that students could not be found to be employees under the Act. On March 31, 2015, the Board granted the Petitioner's request for review and remanded the case for hearing.

On October 30, 2015, following a hearing, the Regional Director issued another Order Dismissing the Petition, again relying on Brown University, supra.

On August 23, 2016, the Board issued a Decision on Review and Order in Columbia University, 364 NLRB No. 90 (2016), in which it reversed the holding of Brown University and found that students in the petitioned-for classifications are employees under the Act. The Board again remanded the case.

On October 31, 2016, the Region issued a Supplemental Decision and Direction of Election ordering that an election be held in this case.

[2] All dates hereinafter are in 2016, unless otherwise indicated.

Departmental Research Assistants employed by the Employer at all of its facilities, including Morningside Heights, Health Sciences, Lamont-Doherty, and Nevis facilities, but excluding all other employees, guards, and professional employees and supervisors as defined in the Act.

Eligible to vote were all unit employees who:

(1) hold an appointment or a training grant in a unit position in the fall semester 2016, or

(2) are course assistants, graders, or readers who are on the casual payroll and who worked 15 hours per week or more in a unit position in the fall semester 2016, or

(3) have held a unit position for either the fall, spring, or summer during the prior academic year.

The Tally of Ballots made available to the parties pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters	4256
Number of void ballots	3
Number of ballots cast for the Petitioner	1602
Number of votes cast against participating labor organization	623
Number of valid votes counted	2225
Number of challenged ballots	647
Number of valid votes counted plus challenged ballots	2872

Challenges are not sufficient in number to affect the results of the election.
A majority of the valid votes counted has been cast for Petitioner.

The Employer filed timely objections to conduct affecting the results of the elections. The Employer's objections are attached hereto as Exhibit A.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the Employer's objections during which the parties were afforded full opportunity to submit evidence bearing on the issues. The investigation revealed the following:

Objection No. 1

In its first objection, the Employer alleges that voters who voted at Earl Hall, the Morningside Campus polling place, were forced to pass known Union agents within 100 feet of the polling place during the final minutes before they cast their votes. Specifically, the Employer alleges that on both days of the election, Union agents sat in the foyer on the second floor of Earl

Hall, which is located less than 100 feet from the third floor auditorium that served as the polling place.

In support of this objection, the Employer submitted three witness affidavits as well as documentary evidence. The Employer submitted affidavits from its director of labor relations, assistant director of employee relations, and labor relations manager. These witnesses stated that on both days of the election, they saw Union representatives in the Earl Hall foyer and described the proximity of that foyer to the polling place. In addition, the Employer provided undated photographs of various locations in Earl Hall (no one appears in the photographs). The Employer also submitted various campaign and social media postings made by the Union representatives to demonstrate that the Union agents were known to the unit. The foregoing conduct of Union agents remaining near the polling area, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.[3] Accordingly, I find that the Employer's first objection raises material and substantial issues of fact that would be best resolved by a hearing and direct that a hearing be held regarding this objection.

Objection No. 2

In its second objection, the Employer alleges that Union supporters were engaged in surveillance and created an impression of surveillance during the election.

In support of this objection, the Employer provided an affidavit from its director of labor relations, who stated that on December 7, 2016, she saw "union supporters" setting up a camera which was pointed at the steps of Earl Hall.

The foregoing alleged conduct of unexplained photographing of employees by union supporters, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.[4] Accordingly, I find that the Employer's second objection raises material and substantial issues of fact that would be best resolved by a hearing and direct that a hearing be held regarding this objection. I note that the Employer bears the burden of demonstrating that the Union supporters involved were either Union agents or that their actions rose the level of objectionable third-party conduct.[5]

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[3] See Milchem, Inc., 170 NLRB 362, 362 (1968) (in which the Board found that the "final minutes before an employee casts his vote should be his own, as free from interference as possible."); see also Boston Insulated Wire, 259 NLRB 1118 (1982) (in which the Board found that electioneering conducted as employees were arriving at work during the election was not objectionable because it was conducted away from the polling place, the employees who were waiting to vote were separated from the electioneering by closed doors, and occurred in an area which had not been designated a "no electioneering" area by the Board Agent conducting the election).

[4] See Randell Warehouse of Arizona, Inc., 347 NLRB 591 (2006) (finding that unexplained photographing of employees by union officials may be coercive).

[5] Third-party conduct may serve as a basis on which to set aside an election if that conduct is "so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." Westwood Horizons Hotel, 270 NLRB 802, 803 (1984).

Objection No. 3

In its third objection, the Employer alleges that on December 6, 2016, the day before the election, the Regional Office engaged in objectionable conduct when it reversed a prior decision to require voters to show identification at the polls. The Employer contends that this reversal and the decision that voters could not be required to show identification at the polls created confusion during the election.

In support of this objection, the Employer provided an email dated December 6, 2016, from Assistant to the Regional Director for Region 2 stating that "presentation of voter ID will not be a requirement in order for an individual to vote. As the presentation of identification was not included in either the Supplemental Decision or Notice of Election, the RD has concluded it cannot be made to be a requirement. Presentation of an ID is therefore encouraged, but not a pre-requisite." In addition, the Employer submitted affidavits from its assistant director of employee relations, its director of labor relations, its labor relations manager, and its assistant director of human resources. These witnesses stated that during the election, Board Agents conducting the election would not allow them to require employees to show identification which resulted in confusion. In one case, a voter had to vote subject to challenge because his or her name was already checked off on the voter list.

The NLRB Casehandling Manual, Section 11312.4 provides that in large or complex elections, the Board Agent should discuss the method of voter identification with the parties. Absent agreement of the parties, "the Regional Director should consider whether to require identifying information in addition to self-identification by voters." Elections may be set aside where failure to implement adequate identification procedures casts doubt on the integrity of the election.[6] Accordingly, I find that the Employer's third objection raises material and substantial issues of fact that would be best resolved by a hearing and direct that a hearing be held regarding this objection.

Objection No. 4

In its fourth objection, the Employer alleges that a Board Agent conducting the election at Columbia University Medical Center ("CUMC) dismissed a non-supervisory employee from serving as an observer in the presence of unit employees, thereby prejudicing voters.

In support of this objection, the Employer provided affidavits from its assistant director of financial operations and its associate general counsel who both stated that on December 7, Tshaye Meaza, the Employer's assistant director of financial operations, was scheduled to serve as the Employer's observer at the CUMC polling place from 12 p.m. to 2 p.m. According to the affidavits, when Meaza arrived at the polls to serve as observer, the Board Agent asked if she was a manager. Meaza replied that she was not a manager and identified herself by her title.

[6] See Avondale Industries, Inc. v. NLRB, 180 F.3d 633 (5th Cir. 1999) (in which the court set aside an election where the Board did not employ adequate identification procedures in a very large election).

According to the affidavits, the Board Agent stated she was not happy with Meaza's answer and that it sounded like Meaza was a supervisor. The Board Agent dismissed Meaza as an observer in front of employees waiting to vote. The Employer maintains that Meaza is not a supervisor within the meaning of Section 2(11) of the Act.

A Board Agent prohibiting a party from using an observer of its choice, even if that observer is not proper, may be grounds for setting aside an election.[7] Accordingly, I find that the Employer's fourth objection raises material and substantial issues of fact that would be best resolved by a hearing and direct that a hearing be held regarding this objection.

Objections Nos. 5 and 6

In its fifth objection, the Employer alleges that on December 7, between approximately 3:00 p.m. and 3:50 p.m., a Board Agent conducting the election closed the doors to the CUMC polling place. In its sixth objection, the Employer alleges that on December 7, a Board Agent conducting the election at the CUMC site turned away prospective voters because the Board Agent had run out of challenged ballot envelopes.

In support of these objections, the Employer submitted affidavits from its associate general counsel and its assistant provost for administration and planning who served as observers at the CUMC polling place on December 7. One of these witnesses stated that on December 7, after 3 p.m., there were approximately 10 voters waiting in line to vote at the CUMC polling place. The Board Agent closed the door to the polling place and would not reopen the door until the voters waiting in line in the polling place had voted. In addition, these witnesses stated that the Board Agent ran out of challenged ballots at about 1:30 p.m. Another Board Agent arrived with more envelopes at approximately 3 p.m. During the interim, about ten voters arrived to vote at the CUMC polling place whose names did not appear on the voter list. The Board Agent did not allow those voters to vote, but told them to come back later. The Employer states that some of the voters returned after 3 p.m. and were able to vote. It is not clear from the Employer's offer of proof how many voters returned to vote.

These objections allege that a suspension in the polling on December 7 at the CUMC polling place was objectionable, whether due to closing a door to the polling place or due to the lack of challenged ballot envelopes. Suspension of polling during an election may serve as grounds to set aside an election if it can be shown that the votes of those possibly excluded could have been determinative, the vote could have been affected by the suspension of polling, or if it is impossible to determine whether the suspension could have determined the outcome.[8]

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[7] See Browning-Ferris Industries of California, 327 NLRB 704 (1999) (in which the Board set aside an election in which a Board Agent conducting an election prohibited an individual from serving as an observer at the election). See also Longwood Security Services, Inc., 364 NLRB No. 50 (2016) (in which the Board set aside an election where a Board Agent refused to allow a union to use an observer of its choice, finding that the Board Agent's action raised a reasonable doubt regarding the fairness of the election).

[8] See Jobbers Meat Packing Co., 252 NLRB 41 (1980) (finding that a delay of polling could be objectionable if one of these factors is satisfied).

Accordingly, I find that the Employer's fifth and sixth objections raise material and substantial issues of fact that would be best resolved by a hearing and direct that a hearing be held regarding these objections. I note that the Employer will bear the burden of showing that the alleged suspension could have affected the election as described above.

Objection 7

In its seventh objection, the Employer alleges that its first six objections identify conduct which "could have affected the results of the election." The Employer did not produce any evidence in support of this objection that had not been submitted and considered in regard to the other objections. Accordingly, I overrule the Employer's seventh objection.

SUMMARY AND NOTICE OF HEARING

In summary, I have directed that a hearing he held regarding the Employer's first, second, third, fourth, fifth, and sixth objections. I have overruled the Employer's seventh objection.

Accordingly, pursuant to the authority vested in the undersigned by the National Labor Relations Board, herein called the Board,

IT IS HEREBY ORDERED that a hearing be held before a duly designated hearing officer with respect to the issues raised by Objections Nos. 1, 2, 3, 4, 5, and 6.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board, as to the issues raised. Within fourteen (14) days from the date of the issuance of such report, any party may file with the Board, an original and seven copies of Exceptions to the report, with supporting briefs, if desired. Immediately upon the filing of such Exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, upon the other parties. A statement of service shall be made to the Board simultaneously with the filing of Exceptions. If no Exceptions are filed thereto, the Board, upon the expiration of the period for filing such Exceptions, may decide the matter forthwith upon the record or make any other disposition of the case.

PLEASE TAKE NOTICE that on January 17, 2017, at 9:30 a.m., and on consecutive days thereafter until concluded, at Two MetroTech Center, 5th Floor, Brooklyn, New York, a hearing will be conducted before a hearing officer of the National Labor Relations Board on the issues set forth in the above Supplemental Decision, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony.

RIGHT TO FILE REQUEST FOR REVIEW

Pursuant to the provisions of Sections 102.69 and 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this Supplemental Decision by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. This request for review

must contain a complete statement setting forth the facts and reasons on which it is based. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Supplemental Decision, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

Procedures for Filing a Request for Review

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on January 18 2016, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically**. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website **is accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.[9] A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab, click on E-Filing, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Brooklyn, New York, on January 4, 2017

Kathy Drew-King
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center
Brooklyn, New York 11201

[9] A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

ATTACHMENT A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 2

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, **Employer,** **-and-** **GRADUATE WORKERS OF COLUMBIA-GWC, UAW.** **Petitioner.**	**Case No. 02-RC-143012**

STATEMENT OF OBJECTIONS TO CONDUCT OF THE ELECTION AND CONDUCT AFFECTING RESULTS OF THE ELECTION

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, The Trustees of Columbia University in the City of New York file the following objections to conduct of the election and conduct affecting the results of the election held in the above-captioned matter on December 7 – 8, 2016:

1. Seventy three percent of all eligible voters were supposed to vote at Earl Hall where, on both days of the election, voters were forced to pass known Union agents within 100 feet of the polling place during the final minutes before they cast their vote. On December 7 and 8, 2016, a number of known Union agents, including the Local President, Maida Rosenstein, sat in the foyer on the second floor of Earl Hall, the only polling place on Columbia's Morningside Campus. The Union agents' location was less than 100 feet from the entrance to the Earl Hall auditorium, the polling place on the Third Floor. The Union agents' presence within 100 feet of

the polling place, in a location that voters were forced to pass to access the polls, and their conversations with eligible voters, improperly coerced a substantial portion of eligible voters and destroyed the laboratory conditions necessary for an election. *See Nathan Katz Realty, LLC v. N.L.R.B.*, 251 F.3d 981, 993 (D.C. Cir. 2001) ("a party engages in objectionable conduct sufficient to set aside an election if one of its agents is continually present in a place where employees have to pass in order to vote"); *Milchem, Inc.*, 170 NLRB 362 (1968) ("The final minutes before an employee casts his vote should be his own, as free from interference as possible.").

2. Identifiable Union supporters engaged in surveillance and created the impression of surveillance for voters entering and exiting Earl Hall. On December 7, 2016, a crowd of Union supporters stood at the front steps of Earl Hall. The supporters set up a camera on a tripod right in front of the entrance to Earl Hall. The supporters also handed out Union stickers and promoted the Union in the election. All eligible voters had to use these steps to enter the polling place, and the base of the steps is less than 100 feet from the entrance to the polling place. The surveillance or impression of surveillance on up to 73% of all eligible voters could have had an impact on the election by instilling a reasonable fear of voting against the Union. *See In Re Nathan Katz Realty, LLC*, 29-CA-23280, 2002 WL 1883790 (Aug. 12, 2002) ("The question to be determined is whether the evidence established that the Union representatives engaged in unlawful surveillance by its conduct of observing employees leaving or entering the polling place. In that regard, the issue is whether that conduct is deemed to have a reasonable tendency to coerce employees.").

3. The Region's eleventh-hour reversal of its original decision that Columbia or government issued identification would be required to vote improperly allowed ineligible voters

to vote and forced potentially eligible voters to vote under challenge. In a conference call on November 21, 2016 to discuss logistics for the election, the Region, Union and Employer agreed that either an employer issued ID or government ID would be required to vote. Columbia viewed this as an agreement regarding the "identifying information to be utilized by voters" in accordance with Section 11312.4 of the NLRB Casehandling Manual. The Region reversed this decision at 11:23 AM on December 6, less than 24 hours before the election began, stating that "voter ID will not be a requirement in order to vote." The Region noted, however, that ID could be "encouraged." The Region changed course yet again at approximately 3:30 PM on Wednesday, December 7, 2016. At that time, Board Agents at Earl Hall informed Employer's Observers that they could no longer request IDs to verify the spelling of a voter's name, contravening the Region's ruling from the day before that IDs could be "encouraged." These untimely and confusing reversals undoubtedly had an effect on the election, and in all likelihood allowed possibly numerous ineligible individuals to vote, and forced potentially eligible voters to vote under challenge. This circumstance was exacerbated by the fact that many students have a similar or the same last name. At least one prospective voter who came to vote at Earl Hall was informed that his name had already been checked off on the eligibility list as having voted at that location. Another student's name was checked off as having voted at Earl Hall; but the same student's name appeared on a challenged ballot at another location. Because of the improper reversal so close to the election, Employer's Observers did not challenge all individuals who could not show IDs, and Board Agents pressured Observers not to request IDs. These actions have created serious cause for concern as to what the vote count would have been– and how many more challenges there would have been – if the Board had not reversed its original decision. Had ID been required, as

originally agreed upon, there would surely have been additional challenges, and there is a reasonable likelihood that the challenges would have been dispositive. The failure to request IDs, followed by the subsequent ban on requesting identification, allowed ineligible voters to vote, forced potentially eligible voters to vote under challenge, and prevented valid challenges from being raised, all of which it is reasonable to assume had an impact on the outcome of the election.

4. A non-supervisory employee serving as an Observer was ordered to leave by a Board Agent in front of voters in the polling place, which may have unlawfully prejudiced prospective voters against the Employer. On December 7, 2016, Tshaye Meaza was scheduled to serve as an Employer Observer from 12 – 2 PM at Earl Hall. Meaza is an Assistant Director for Finance and Planning in the Provost's Office. Meaza pays vendors, transfers funds to departments, and performs accounting duties. Meaza does not oversee employees, and does not supervise any Research Assistants, Teaching Assistants, or any other students with appointments. The Board Agent, after asking Meaza her title, told Meaza that she did not want Meaza serving as an Observer because Meaza was a supervisor. The Board Agent spoke to Patricia Catapano, the Associate General Counsel of Columbia, and told Capatano that she would rather have Catapano as an observer, and dismissed Meaza. This dismissal of an Employer Observer occurred in front of eligible voters at the Earl Hall polling place, potentially prejudicing voters against the Employer by creating a false impression that the Employer was surveilling the polling place. This false accusation destroyed the laboratory conditions necessary for an election and is reasonably likely to have had an impact on the outcome of the election.

5. On December 7, 2016, the Board Agent closed the doors to the polling place at Columbia University Medical Center, which prevented eligible voters from voting in the

election. 397 voters were eligible to vote at Columbia University Medical Center. When asked by both the Employer and Union Observers to open the doors so as not to confuse prospective voters, the Board Agent refused until prior votes had been processed. Closing the doors to the polling place may have contributed to eligible voters not voting and destroyed the laboratory conditions necessary for a free and fair representation election. *See Whatcom Security Agency*, 258 NLRB 985 (1981) (setting aside the election because inadvertently locking the doors of the polling area may have contributed to some employees not voting); *Kerona Plastics Extrusion Company*, 196 NLRB 1120 (1972) (setting aside election and holding that "laboratory conditions have been disturbed" where polls were closed 20 minutes early).

6. On December 7, 2016, the Board Agent at Columbia University Medical Center turned away many prospective voters after running out of challenge ballot envelopes. The Board Agent informed prospective voters who were not on the list for that polling place that they were not allowed to cast a vote at that time, and more challenge envelopes did not arrive until mid-afternoon. These actions could have affected the outcome of the election.

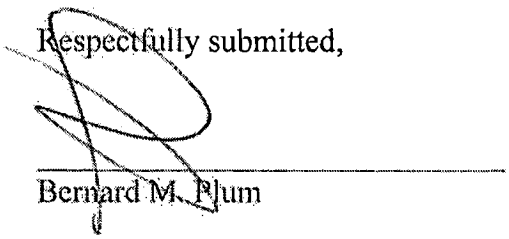
7. Together or separately, these objections identify conduct which could have affected the results of the election. *See Cambridge Tool & Mfg. Co.*, 316 NLRB 716 (1995) (ordering that election can be set aside where the objectionable conduct "could well have affected the outcome of the election"). The number of "Yes" votes exceeded the number of "No" votes and challenged ballots by 332, which represents just 11.5% of total votes cast and 7.8% of eligible voters – many of whom may well have been deterred from voting by the objectionable conduct. As a result, eligible voters have been interfered with, coerced, and restrained in the exercise of their Section 7 rights, and the "laboratory conditions" required for a free and fair election were not

preserved.

WHEREFORE, the Regional Director should set aside the results of the election and direct that a new election be held in which the eligible voters can decide, in an atmosphere free from improper conduct, whether they wish to be represented for purposes of collective bargaining by the Petitioner.

Dated: New York, New York
December 16, 2016

Respectfully submitted,



Bernard M. Plum

PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036-8299
(212) 969-3000

Jane E. Booth
Patricia S. Catapano

COLUMBIA UNIVERSITY
Office Of The General Counsel
412 Low Memorial Library
535 West 116th Street
New York, New York 10027

Attorneys for
The Trustees of Columbia University
In the City of New York

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, **Employer** **and** **GRADUATE WORKERS OF COLUMBIA-GWC, UAW** **Petitioner**	**Case No. 02-RC-143012**

Date of Filing: December 16, 2016

AFFIDAVIT OF SERVICE OF: Objections to Election from The Trustees Of Columbia University In The City Of New York

I hereby certify that, on the 16th day of December 2016, I served the above-entitled document(s) upon the Regional Director via the National Labor Relations Board's E-Filing Program.

Dated: December 16, 2016

Yonatan L. Grossman-Boder