

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

In the Matter of *
*
HARVARD GRADUATE STUDENT UNION – UAW *
*
Petitioner * Case No. 01-RC-186442
*
And *
*
PRESIDENT AND FELLOWS OF HARVARD *
COLLEGE *
*
Employer. *

RESPONDENT’S RESPONSE TO PETITIONER’S OBJECTION

Respondent President and Fellows of Harvard College (the “University” or “Harvard”) submits this response to the objection filed on December 29, 2016, by Petitioner Harvard Graduate Student Union-UAW (“Petitioner” or “HGSU-UAW”). The Petitioner’s objection does not support a finding that the election held on November 16-17, 2016 should be set aside nor does it warrant further investigation by the Board. Harvard respectfully requests that the Petitioner’s objection should be dismissed and the results of the election should stand.

In a meeting on October 14, 2016, Petitioner informed Harvard of its intention to file a petition with the National Labor Relations Board (“NLRB” or the “Board”) and sought the University’s assent to a voluntary election agreement. The parties worked together to reach an election agreement, which was signed on October 18, 2016. The agreement was jointly presented to the Board on the same date, and it was approved by the Board on October 21, 2016. The agreement contained the definition of the unit as proposed by the Petitioner, and it also defined a group of students who would vote under challenge, based on their having held a teaching or research position in the previous academic year. After finalizing the election agreement, the parties continued to work together on election logistics and the eligible voter list (i.e., the “*Excelsior* list”).

The University’s relationship with these voters is primarily academic, not employment, and the information systems reflect that orientation. Harvard does not record and track the proposed bargaining unit members as it does its traditional employees. In some cases, a student’s employment is clear and distinct from the academic program. For example, many students serve in teaching or research positions that are unrelated to their academic program and

are paid on an hourly or monthly payroll via the PeopleSoft payroll system. In other cases, however, the academic and employment aspects of the work – both research work and instructional work – are closely entwined, and neither Harvard’s student information system nor the payroll system indicates whether, when, how, or where a student is functioning in an “employment” capacity as defined by the decision of the NLRB in *Columbia University*, 364 NLRB No. 90 (2016). Recognizing that its financial and payroll systems would not in themselves provide a comprehensive list of voters, Harvard used those systems together with information from a number of other sources to carefully prepared a list of individuals holding positions in the defined bargaining unit who were therefore eligible to vote. There was and is no way for Harvard to have generated a materially better or more “accurate” *Excelsior* list than the list that was created for this election.

In accordance with the election agreement, the initial list of proposed bargaining unit members (for purposes of determining a requisite showing of interest) was provided to the Board on October 28, and the *Excelsior* list was provided to the Board and the HGSU-UAW on November 1, 2016. After receiving the *Excelsior* list, the Petitioner posed a handful of questions about the inclusion or exclusion of a small number of potential voters. Harvard responded to each of these questions promptly and accurately, in many cases making the requested adjustment to the voter list. The Petitioner did not indicate that there were any substantial inclusions or exclusions from the list; nor did the Petitioner ask about the way in which voters’ names were designated on the list (i.e., the issue of so-called “preferred” name vs. “official” name.). Significantly, at no time during these discussions did the HGSU-UAW inquire about the University’s methodology in creating the list, despite the unique circumstances of this case, where thousands of individuals whose primary relationship with the institution is as students had to be identified as members of a potential bargaining unit. Rather, the HGSU-UAW raised only limited concerns about the list, which were promptly addressed by Harvard.

The election took place on November 16 and November 17, 2016. Out of a bargaining unit of approximately 3,556 voters, 1456 voted against representation by the HGSU-UAW and 1272 voted for union representation. There are 313 challenged ballots remaining after the parties working together were able to resolve nearly 800 of the challenges. Importantly, all of the ballots that were challenged because of a discrepancy between the way the voter’s name appeared on the list as compared to the way the name appeared on the voter’s Harvard student ID card were successfully resolved.

Harvard engaged in every good faith effort to produce an *Excelsior* list that identified all students employed in teaching and research positions, consistent with the definition of bargaining unit members proposed by the HGSU-UAW. The Petitioner has not provided any basis to support a conclusion that the *Excelsior* list prepared by Harvard was materially deficient so as to have affected the outcome of this election. Harvard strongly contests the Union’s assertion and states that the HGSU-UAW’s objection should be dismissed.

Respectfully submitted,

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE

By its attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2017, a true and accurate copy of the above document was served, by electronic mail, upon counsel for Petitioner:

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