

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA  
Employer

and

Case 04-RC-327396

GRADUATE EMPLOYEES TOGETHER-  
UNIVERSITY OF PENNSYLVANIA/  
INTERNATIONAL UNION,  
UNITED AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA (GETUP-UAW)  
Petitioner

ORDER

The Petitioner's Request for Review of the Regional Director's Decision and Direction of Election is granted as it raises substantial questions warranting review.

The parties dispute whether a subset of Educational Fellowship Recipients (EFRs) are statutory employees who may be appropriately included in the petitioned-for unit. The Regional Director found that the Petitioner "is precluded from relitigating whether EFRs are statutory employees as a result of its stipulation in the 2017 representation case"; accordingly, she directed an election in a unit that excluded the EFR classification in its entirety. We disagree with the Regional Director's preclusion finding and reverse her decision.

First, contrary to the Regional Director's assertion, the Employer and the petitioning union<sup>1</sup> in Case 04-RC-199609 did not enter into a formal stipulation as to the employee status of the EFRs at issue here; rather, the transcript excerpts and 2017 Decision and Direction of Election appended to the Employer's Statement of Position in the present dispute merely indicate that the parties agreed to exclude EFRs from the unit in the 2017 representation case. As the Board has explained, an agreement to exclude certain classifications of employees from a petitioned-for unit in an RC case is not binding in future proceedings; it merely confirms that the classification in question will not participate in that particular election. See *S.S. Joachim & Anne Residence*, 314 NLRB 1191, 1191-1192 (1994).

Furthermore, even if the parties had stipulated to the employee status of EFRs in Case 04-RC-199609, this stipulation would not have preclusive effect in the present dispute. Pursuant to the Board's decision in *Wolf Creek Nuclear Operating Co.*, 365 NLRB No. 55 (2017), the

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<sup>1</sup> We need not and do not reach the issue of whether the petitioning union in Case 04-RC-199609 is the same union or in privity with the Petitioner here.

employee status of EFRs was not “fully litigated” in Case 04-RC-199609 and this issue was not an “essential component” of the Regional Director’s 2017 Decision and Direction of Election. The Regional Director did not “appl[y] governing law to a set of evidentiary facts,” as occurred in *Wolf Creek*, much less make any ruling or statement as to the employee status of the EFRs. Instead, the Regional Director simply acknowledged that “[t]he petition was amended during the hearing to exclude ‘educational fellowship recipients,’” and therefore excluded EFRs from the unit on that basis.

Finally, we observe that any stipulation between the parties in Case 04-RC-199609 was superseded by the pre-hearing Stipulation in the present dispute, which unambiguously resolved the unit placement of certain EFRs and indicated that the eligibility of other EFRs was an issue in dispute that would be litigated via hearing.

Accordingly, we reverse the Regional Director and find that the proceedings in Case 04-RC-199609 have no preclusive effect on the employee status of the EFRs in the present dispute. We further grant the Petitioner’s request that certain EFRs—specifically, first-year Biology PhD students in the University’s School of Arts and Sciences, and first- and second-year PhD students in the Biomedical Graduate Studies program at the Perelman School of Medicine—be permitted to vote subject to challenge in the election, and that their ballots be segregated and impounded so that the Regional Director can resolve the employee status and unit inclusion of the these students after the election, if necessary.<sup>2</sup>

LAUREN McFERRAN,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
GWYNNE A. WILCOX,	MEMBER

Dated, Washington, D.C., April 10, 2024.

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<sup>2</sup> Consistent with the pre-hearing Stipulation between the parties, certain EFRs are included in the unit, and should be permitted to vote without challenge, “if they provide teaching or research services for the University, including those who serve as Teaching Assistants, Teaching Fellows, Research Assistants, Research Fellows, Pre-Doctoral Trainees, and Student Workers.”

Because the Regional Director’s decision did not address whether EFRs constitute statutory employees, we do not pass on that issue, and our order here has no bearing on its ultimate resolution. We hold only that the 2017 proceedings have no preclusive effect here, and that the parties should be held to the Stipulation entered into in this proceeding.