

**IN THE MATTER OF
GRIEVANCE ARBITRATION
BETWEEN**

**GRADUATE EMPLOYEE ORGANIZATION-
UAW LOCAL 2322**

-AND-

**UNIVERSITY OF MASSACHUSETTS
(AMHERST)**

**AMERICAN ARBITRATION ASSOCIATION
CASE NO: 01-23-0002-9204**

The grievance was heard virtually by Arbitrator Richard G. Boulanger, Esq. on March 28, 2024 and July 8, 2024.

The University of Massachusetts (Amherst) Graduate Employee Organization-UAW, Local 2322 (Union) was represented by Mr. James Shaw, Esq.. The Union called the following witnesses: Mr. David Pritchard; Ms. Corey Palmer; Ms. Katie Webster; and Mr. Shane Henckel.

The University of Massachusetts Amherst (University) was represented by Mr. Joseph Ambash, Esq.. The following individuals were called as witnesses by the University: Ms. Jacqueline Urla; Ms. Jocelyn Tedesky; and Mr. Mark Preble.

Witnesses were sworn.

The parties were given full opportunity to present evidence and make arguments.

The stipulated issue is as follows:

Did the University violate Article 1 or Article 2 of the collective bargaining agreement by excluding students on internal fellowships and training grants from the bargaining unit? If so, what shall be the remedy?

I. COLLECTIVE BARGAINING AGREEMENT

- A. **ARTICLE 1:** **RECOGNITION**
- B. **ARTICLE 2:** **DEFINITIONS**
- C. **ARTICLE 31:** **GRIEVANCE PROCEDURE**

II. SUMMARY OF THE CASE

The University has historically refused to consider students receiving internal fellowships and training grants (trainees) as bargaining unit employees.

The Union contends that internal fellows and trainees satisfy the specified conditions of the Recognition article, and must be recognized by the University as bargaining unit employees.

The University contends that internal fellows and trainees do not satisfy the necessary contractual contingencies for inclusion in the bargaining unit.

The arbitrator ruled that the University did not violate Articles 1 and 2 of the Collective Bargaining Agreement by excluding students on internal fellowships and training grants from the bargaining unit.

III. FACTUAL BACKGROUND

Since the early 1990s, the Graduate Employee Organization (GEO-UAW), Local 2322 has represented graduate student employees at the University. The parties' first collective bargaining agreement covered the period 1993-1996. (See Employer Exhibit #9.) The bargaining unit has historically been described in Article 1 (**Recognition**). (See Joint Exhibit #1.) University fellows and trainees "...whose duties and responsibilities are substantially similar to those of TOs, TAs, RAs, PAs, ARDs, or interns" are included in the Recognition article. University fellows receive their fellowships from the University. Historically, the University has excluded internal fellows and trainees from the bargaining unit.

The most recent collective bargaining agreement covers the period September 1, 2020 to August 31, 2023. As a result of the negotiations that led to the 2020-2023 collective bargaining agreement, the parties added the classification "External Prestigious Graduate Fellows (unless prohibited by law or the terms of the funding agency) whose duties and responsibilities are substantially similar to those of TOs, TAs, RAs, PAs, ARDs, or interns..." to the Recognition article. Most External Prestigious Graduate Fellows receive their fellowships from government agencies outside of the University. External funding agencies often describe the terms and conditions of that fellowship.

Both Ms. Corey Palmer and Ms. Katie Webster, doctoral candidates at the University, were awarded the internal Lotta Crabtree fellowship. They testified that as Lotta Crabtree fellows they were required to perform work tasks identical to their RA/TA duties and responsibilities. The Lotta Crabtree fellowship is defined as a non-working fellowship whereby the recipient, as part of the fellowship application process agrees, as must the University Principal Investigator,

that it will be a non-working fellowship. (See Union Exhibit #3 and Employer Exhibit #15.) Both Ms. Palmer and Ms. Webster testified that they received the Lotta Crabtree fellowship in one lump sum, and that they were responsible for any taxes due as a result of receiving that payment. Mr. David Pritchard, Union service representative, testified that a University TA, or TO receives bi-weekly wages from which taxes are deducted.

On April 3, 2023, the Union grieved the University's exclusion of internal fellows and trainees from the bargaining unit. (See Joint Exhibit #2.) The University denied the grievance on June 12, 2023. (See Joint Exhibit #3.) The grievance was appealed to arbitration as it was not resolved during the course of the parties' grievance procedure.

IV. SUMMARIES OF THE PARTIES' ARGUMENTS

A. UNION:

The Union argues that it has upheld its burden of proving that University fellows and trainees are University employees. The duties and responsibilities of University fellows and trainees are substantially similar to those of TOs, TAs, RAs, PAs, ARDs, and interns. Therefore, the University violates Article 1, the Recognition article, when it fails to recognize the bargaining unit status of fellows and trainees. Ms. Palmer and Ms. Webster testified that the duties that they performed as Lotta Crabtree fellows were identical to the work that they had undertaken as RAs. There was no evidence submitted by the University contradicting their testimony. The University's grievance response was that some fellows and trainees perform the same work as do RAs, corroborating the testimony of Ms. Palmer and Ms. Webster. Consequently, the Article 1 substantially similar standard has been satisfied by the uncontradicted testimony of Ms. Palmer and Ms. Webster.

Fellows and trainees have been required to perform duties independent of their own academic work. The tasks are performed at the request of their supervisor(s). Fellows and trainees also perform RA duties and responsibilities as a requirement of their financial awards negating the Article 1 bargaining unit exclusion term. Therefore, the University must recognize the bargaining unit status of fellows and trainees

The University's defenses are misplaced, including reliance on bargaining history evidence. The Union's proposals for the 2020-2023 contract were intended to clarify the status of fellows and trainees, but they were not an admission that current provisions exclude fellows and trainees from the bargaining unit. The evidence is clear that current **Recognition** provisions include fellows and trainees in the bargaining unit.

In support of its bargaining unit exclusion arguments, the University also contends that fellows and trainees have never been included in the bargaining unit. Although the parties acknowledge in the collective bargaining agreement that fellows are “usually” not obligated to perform service, the evidence here is that they have been required to perform duties as part of their fellowships. Although it is not clear why the dispute has not ripened before the instant grievance, the arbitrator must enforce the clear contract language relative to the bargaining unit inclusion of fellows and trainees. The grievance should be upheld, and a make whole remedy ordered.

B. UNIVERSITY:

The grievance must be denied for a number of reasons. The parties agreed that non-working fellows and trainees are excluded from the bargaining unit. The Union now seeks to include in the bargaining unit fellow and trainee positions that have been excluded for thirty-one (31) years. The grievance is thirty-one (31) years untimely. The Union has waived, by inaction, its present claim that fellows and trainees have been improperly excluded from the bargaining unit. Fellows and trainees have never been included in the bargaining unit. The Union’s grievance seeks to expand the bargaining unit through the grievance arbitration process. The arbitrator is not authorized to expand the bargaining unit. The parties’ bargaining history also makes it clear that fellows and trainees have never been included in the bargaining unit, and for that reason the Union has recently proposed that fellows and trainees be included in the bargaining unit.

There are no University fellows and trainees whose duties and responsibilities are substantially similar to those of TOs, TAs, RAs, PAs, ARDs, or interns because all University fellows and trainees are non-working fellows and trainees. The Union has failed to identify a

“working fellow and/or trainee” who performs tasks for remuneration. Fellows and trainees receive no remuneration for the performance of their duties. They are not paid or taxed as employees.

The University’s long-standing academic policy is that the duties assigned to a fellow or trainee is a component of his/her academic training. The academic responsibilities are not work duties. The arbitrator is expressly without the authority to consider, or make decisions regarding academic matters, or aspects of a GEO member’s status as a student. The grievance must be denied for all of the reasons specified above.

V. FINDINGS AND OPINION

A. CONTRACT STANDARDS

Pursuant to the parties' stipulated issue, the provisions of Article 1 (**Recognition**) and Article 2 (**Definitions**) must be evaluated to determine whether students on internal fellowships or training grants are included in the bargaining unit. Article 1 includes the following provisions:

UAW and UAW Local 2322/GEO shall be the representative of and the bargaining unit shall consist of: Teaching Associates (TO), Teaching Assistants (TA), Research Assistants (RA), Project Assistants (PA), Assistant Residence Directors (ARD), and Graduate Interns employed by the University of Massachusetts Amherst, and University of Massachusetts Amherst fellows and trainees, and external Prestigious Graduate Fellows (unless prohibited by law or the terms of the funding agency) whose duties and responsibilities are substantially similar to those of TOs, TAs, RAs, PAs, ARDs, or Interns, for the purpose of good faith negotiations with the Administration on matters relating to employment policies and practices. The subjects of negotiation shall explicitly exclude matters relating to academic policies. The bargaining unit shall also include graduate student employees of the President's Office working in the above positions at the University of Massachusetts Amherst campus who are employed by the Donahue Institute.

Performing work required to fulfill a degree requirement shall not be reason for exclusion from the provisions of this Agreement. However, excluded from the bargaining unit shall be: University of Massachusetts Amherst interns working off campus and not receiving University paychecks; fellows and trainees who are not required to perform duties for remuneration; graduate students working in the Chancellor's Office or any of the Vice Chancellors' offices; graduate student employees employed by University of Massachusetts Boston, Lowell, Dartmouth, Worcester, and the President's Office (except as stated above); graduate student tutors and other graduate student hourly employees; faculty members; and classified and professional employees. For a graduate student employee performing both work in pursuit of an academic degree and work for compensation, that work performed solely in pursuit of an academic degree shall not be covered by the terms of this Agreement, while any work performed for compensation shall be covered by the terms of this Agreement.

The Administration will report to GEO within thirty days any new job classifications to which graduate students are appointed and will determine if the job classification will be included under this Agreement. If there is disagreement between GEO and the Administration concerning the inclusion or exclusion, then the two parties shall meet to negotiate. The Administration will not make any

agreement with any group for the purpose of undermining GEO.

In the negotiations for the 2020-2023 collective bargaining agreement, the Union proposed to add “fellows, non-working fellows, and working trainees and hourly graduate employees...” to the bargaining unit. (See Employer Exhibit #3.) The Union’s proposal was clearly an attempt to modify Article 1 terms. The University rejected the Union’s proposals regarding fellows and trainees. (See Employer Exhibits #4 and #5.) Ultimately, the parties agreed to add only the “Prestigious External Graduate Fellow” classification to the bargaining unit. (See Joint Exhibit #1 and Employer Exhibits #4 and #5.) The Recognition article remained as it was in the 2017-2020 collective bargaining agreement with the exception of the express inclusion of the external Prestigious Fellowship. (See Joint Exhibit #1 and Employer Exhibit #1.)

Per paragraph 1 of Article 1, a University fellow or trainee is included in the bargaining unit so long as the duties and responsibilities of the fellow or trainee “are substantially similar to those of TOs, TAs, RAs, PAs, ARDs, or Interns...” In paragraph 2 of Article 1, the parties memorialized their agreement that fellows and trainees are excluded from the bargaining unit unless they are required to perform duties for remuneration as a condition of receiving their fellowships or training grants. The inclusionary substantially similar standard of paragraph 1 must be read together with the exclusionary term of paragraph 2 to give effect to both provisions as intended by the parties. In doing so, it is clear that a fellow or trainee must meet two (2) conditions to be included in the bargaining unit:

- Perform duties substantially similar to those performed by TOs, TAs, RAs, Pas, ARDs, and Interns...;
- Perform duties for remuneration.

The Union contends that it has upheld its burden because its witnesses testified that the duties performed by internal fellows and trainees are identical to the tasks performed by TAs, TOs,

RAs, etc... The University argues that the Union has not satisfied its obligation because the awards received by fellows and trainees do not require service or performance.

The job classifications specified in Article 1 are defined in Article 2 as follows:

c. "Graduate Student Employee" - those TAs, TOs, RAs, PAs, ARDs, Interns, Fellows, and Trainees represented by GEO as defined in Article 1, Recognition

h. "Teaching Associate" - a graduate student employed on a salaried basis responsible for the teaching and grading of a course. A TO may have additional, related duties as assigned.

i. "Teaching Assistant" - a graduate student employed on a salaried basis with one or more of the following responsibilities in courses for which they do not have primary responsibility: (1) coordinate, lead, or assist in the instructional process in preparation and direct interaction with students in lab, discussion, quiz, or problem sessions; (2) meet with students and teach during office hours; (3) grade papers; (4) grade and proctor exams; (5) supervise undergraduate interns; (6) counsel students; (7) administer colloquium programs. A TA may have additional, related duties as assigned.

j. "Research Assistant" - a graduate student employed on a salaried basis to perform work related to academic research, including but not limited to, the gathering and analysis of data, the development of theoretical analyses and models, the production or publication of scholarly journals and research reports, which is primarily for their own research, and is secondarily for the benefit of the University, faculty or academic staff supervisor, or a granting agency.

k. "Project Assistant" - a graduate student employed on a salaried basis to perform work related to academic research, including but not limited to the gathering and analysis of data, the development of theoretical analyses and models, the production or publication of scholarly journals and research reports, which is primarily for the benefit of the University, faculty or academic staff supervisor, or a granting agency, and is secondarily for the graduate student employee's own research.

l. "Intern" - a graduate student employed on a salaried basis, in academic, research, service, or administrative support, to perform work which is specifically designed to support or enrich their academic experience, and/or provide practical experience which directly augments their classroom studies.

m. "Fellow" - a graduate student who is receiving an award made to assist the student in the pursuit of their studies or research, usually with no requirement for service or performance.

n. "Prestigious Graduate Fellow" - a graduate student who applies for and receives an external award made to assist the student in the pursuit of their studies or research, usually with no requirement for service or performance. Individuals pursuing a prestigious fellowship shall notify the Graduate School when they apply for and upon receiving a prestigious fellowship. Prestigious Graduate Fellows shall have a "without-salary" status. The following Articles shall not apply to Prestigious Graduate Fellows unless the same or similar benefits are provided through the extramural agency:

- Article 20 Job Descriptions
- Article 23 - Appointment and Reappointment
- Article 29 - Job Security
- Article 38 - Vacation
- Article 39 - Additional Time Off

Fellowships that provide a semester stipend equivalent to at least 190 hours times the campus minimum hourly rate outlined in Article 32, "Stipends" shall automatically be considered under this definition and included in the bargaining unit.

The University will provide the union with a list of graduate students on fellowship within four weeks of the beginning of each academic semester. In the event that the parties become aware of a fellowship that meets the definition of a Prestigious Graduate Fellow, which falls below the above mentioned 190 hour semester stipend equivalent, but which reaches or exceeds an 85 hour semester stipend equivalent threshold, the parties agree to meet promptly to discuss the inclusion of that fellow within the bargaining unit. Further, if applicable law or terms of a funding agency seemingly prohibit inclusion of a prestigious graduate fellowship in the bargaining unit the parties agree to meet promptly to discuss potential remedies or changes.

o. "Trainee" - a graduate student who is receiving an award made to assist the student in the pursuit of their studies or research, sometimes with and sometimes without the requirement of service or performance, but usually limited to a specific discipline by the granting agency.

p. "Assistant Residence Director" (which is also "Assistant Residence Director/Live-in Residence Hall Graduate Assistant")-a graduate student employed on a salaried basis whose responsibilities are as described in the appended current job description (or subsequent amendments) and who is required, as a condition of employment to be a graduate student and to reside in University-assigned housing. Notwithstanding anything to the contrary elsewhere in this Agreement, a full-time ARD shall be defined as twenty hours per week.

Per the Article 2 definitions, the parties acknowledged that fellows usually have no requirement for service or performance while trainees sometimes have a service or performance obligation. The no-service or performance requirement term in the fellow and trainee definitions is another way of stating that fellows and trainees are not required to perform duties for remuneration per Article 1. Therefore, by virtue of the above-cited terms of Articles 1 and 2, the dispositive inquiry relative to bargaining unit inclusion for fellows and trainees is whether there is a requirement for service or performance as consideration for receiving a fellowship or training grant.

B. DUTIES AND RESPONSIBILITIES OF FELLOWS AND TRAINEES

Despite the Union's claim, and the testimony of its witnesses that fellows and trainees perform the same duties, or substantially similar duties, as RAs and other bargaining unit employees, it is clear from the evidence taken as a whole, particularly the fellowship and trainee application forms themselves, that the performance of such duties is not required as a condition of receiving the fellowship and training grants. (See Union Exhibits #1-#3 and Employer Exhibits #15 and #16.) The Recognition article provides bargaining unit status to fellows and trainees only if they are required to perform duties for remuneration similar to RAs, TAs, TOs, etc.. (Emphasis added.) Put another way, if fellows and trainees are not required to perform duties for remuneration, they are excluded from the bargaining unit.

It is noteworthy that the fellowship form itself is entitled "Non-Working Fellowship." (See Employer Exhibit #15.) Under that form's title is indicated the purpose of the Fellowships ("For disbursement of Fellowship, Traineeship or Fee Payment.") (See Union Exhibit #3 and Employer Exhibit #15.) There is no term requiring performance of service as a condition of receiving the fellowship or training grant. Rather, the Non-Working Fellowship form includes

the following Principal Investigator representation:

The Principal Investigator has reviewed this non-working fellowship and represents that all of the following conditions have been met: that no teaching, research, or other services are, were, or will be required as a condition for receiving the non-working fellowship; that the activities of the research fellow primarily benefit the researcher and do not materially benefit the University or its affiliates; that the nonworking fellowship is in connection with the National Institute of Health's (NIH's) National Research Service Awards Program (NRSA), or in connection with another grant program that precisely mirrors the NRSA program.

Principal Investigator /Funding Authorization _____ Date
(See Union Exhibit #3 and Employer Exhibit #15.)

It is not surprising that fellows are typically not required to perform duties for remuneration as the parties' Article 2 definition itself specifies that fellows are not typically required to perform tasks as a requirement of receiving their financial awards. The Union points to the "Puryear Fellowship" as a true, non-working fellowship as distinct from the Lotta Crabtree fellowship and similar fellowships. (See Union Exhibits #3 and #7 and Employer Exhibit #15.) However, as with both fellowships, there is no work requirement as evidenced by the fellowships' application forms themselves.

While the Article 2 trainee definition provides that trainees sometimes perform duties for remuneration, Non-Working Traineeship application forms are also signed by a Principal Investigator/Funding Authorization, similar to the Fellowship application form. (See Union Exhibit #3 and Employer Exhibits #15-#16.) The NIH Biotechnology T32 Traineeship Application and the NIH Chemistry-Biology Interface T32 have the following eligibility requirements:

To apply for this **two-year traineeship**, students must be working in the lab of a Biotech faculty member. **U.S. citizens or permanent residents** only are eligible for the NIH-funded fellowships, however all students, both domestic and international are eligible for UMass supported fellowships. (See Union Exhibits

#1 and #2.)

While working in the lab of a faculty member is an application prerequisite, there is no application term which indicates that the traineeship grant is remuneration for the performance of such lab work. The lack of such an express provision in the application form squares with the Article 2 trainee definition disclosing that some traineeships do not require the performance of service.

Bargaining unit positions such as TOs, TAs, RAs, PAs, ARDs, or interns are defined in Article 2 as “a graduate student employed on a salaried basis...” That term is lacking in the fellow and trainee Article 2 definitions. Consequently, there is insufficient evidence to conclude that fellows and trainees perform duties and responsibilities for remuneration. Even if fellows and trainees are performing duties and responsibilities, it is not for remuneration, per the fellow/trainee award terms and conditions. Underscoring that fellows and trainees do not receive remuneration for performance of duties is their one-time lump sum financial award without a tax deduction as distinct from bi-weekly wage payments to RAs and other bargaining unit employees from which taxes are deducted. University Human Resources pays Graduate Assistants on a bi-weekly basis with taxes withheld while the Bursar’s Office disburses an internal fellowship award in one lump sum with no taxes withheld except for international students.

C. CONCLUSION

Per the terms of Article 31(c), I am obligated to apply the Article 1 and Article 2 bargaining unit standards to the facts made manifest by the evidence. Article 31 (**Grievance Procedure**) provides as follows in pertinent part:

“The arbitrator shall be without authority to add to, subtract from, or modify the

terms of this Agreement.” (See Joint Exhibit #1.)

Consequently, as the grievance arbitrator, I am not authorized to alter the parties’ Recognition or Definition provisions vis á vis fellows and trainees, either by way of deletion, addition or modification. The evidence reveals that fellow/trainee financial awards and grants are independent of the performance of duties and responsibilities. To the extent that duties and responsibilities performed by fellows and trainees are substantially similar, or even identical to RA duties and responsibilities, such as lab research and associated tasks, they are a component part of the academic program of a fellow/trainee, and are not required as a condition of receiving the fellow/trainee financial award and grant.

The University of Massachusetts (Amherst) did not violate Articles 1 and 2 of the Collective Bargaining Agreement by excluding students on internal fellowships and training grants from the bargaining unit. The grievance is denied.

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CASE NO: 01-23-0002-9204

AWARD

The University of Massachusetts (Amherst) did not violate Articles 1 and 2 of the Collective Bargaining Agreement by excluding students on internal fellowships and training grants from the bargaining unit. The grievance is denied.

Dated: 9/24/24


/s/ Richard G. Boulanger, Esq.
Arbitrator