

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 34**

**BROWN UNIVERSITY**

**Employer**

**And**

**Case 01-RC-338737**

**GRADUATE LABOR ORGANIZATION,  
RIFTHP/AMERICAN FEDERATION OF  
TEACHERS LOCAL 6516**

**Petitioner**

**DECISION AND ORDER<sup>1</sup>**

Brown University (the Employer or Brown) operates a private, non-profit university with a campus located in Providence, Rhode Island. The mission of Brown University is to serve the community, the nation, and the world by discovering, communicating, and preserving knowledge and understanding in a spirit of free inquiry, and by educating and preparing students to discharge the offices of life with usefulness and reputation.

The Petitioner, Graduate Labor Organization, RIFTHP/American Federation of Teachers Local 6516, presently represents a bargaining unit comprised of approximately 300 postdoctoral research associates, postdoctoral fellows, research fellows, and dean's faculty fellows who are employed in various capacities, including providing research services.

In this matter, the Petitioner seeks a self-determination election in which a group of approximately fifty postdoctoral fellows with clinical placements in the Department of Psychiatry and Human Behavior, and postdoctoral fellows receiving external funding, would be permitted to vote as to whether or not they wish to be included in the existing bargaining unit. Some of the postdoctoral fellows with clinical placements perform research, some perform clinical work, and some perform both. The postdoctoral fellows receiving external funding may be part of any of Brown's academic departments, such as the Department of Physics. These two groups of postdoctoral fellows ("postdocs") are the only postdocs affiliated with Brown who are not already

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<sup>1</sup> The petition in this case was filed under Section 9(c) of the Act. Except where otherwise precluded, the parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board) on April 5, 2024, April 9, 2024, April 11, 2024, and April 18, 2024. I have the authority to hear and decide these matters on behalf of the Board under Section 3(b) of the Act. I find that the Hearing Officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; that the Petitioner is a labor organization within the meaning of the Act; that the Petitioner claims to represent certain employees of the Employer; that there is no contract bar or other bar to election in this matter; and that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

a part of the existing bargaining unit, and their addition to the unit accordingly would not fragment the workforce<sup>2</sup>

The Employer takes the position the petition should be dismissed because the petitioned-for postdoctoral fellows are not employees of Brown University. Rather, the Employer submits that the postdoctoral fellows with clinical placements are employees of the hospitals at which they work and that the postdoctoral fellows receiving external funding are not employees where they need not perform work pursuant to Brown's direction to maintain that funding. The Employer further submits that the petitioned-for fellows lack an internal community of interest.

However, the Employer failed to raise these contentions in a timely served Statement of Position. On March 27, 2024, Region 1 of the National Labor Relations Board (the Region) served a copy of the Petition in this case on the Employer and notified the Employer of its obligation to file a Statement of Position and to serve that Statement of Position on the Petitioner by noon on April 3. It is undisputed that the Employer did not serve the Petitioner with its Statement of Position until 12:17 p.m.

Section 102.66(d) of the Board's Rules and Regulations precludes a party from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue where the party fails to raise the issue in its Statement of Position or where the party specifically contests the appropriateness of the unit in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to the proposed unit to make an appropriate unit. See also *Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13 (2017) (adopting Regional Director's decision to reject employer's statement of position and preclude litigation of issues raised therein based solely on the employer's failure to timely serve its statement of position on the petitioner); *Brunswick Bowling Products, LLC*, 364 NLRB No. 96 (2016) (overturning Regional Director's decision to accept statement of position that was timely filed, but served 3 hours and 20 minutes late, and allow union to litigate issues raised therein).

However, Section 9 of the Act obligates the Board to make a determination as to whether the petitioned-for unit is appropriate for collective bargaining when the parties refuse to stipulate to the appropriateness of the unit. *Allen Healthcare Services*, 332 NLRB 1308, (2000); *Williams-Sonoma Direct, Inc.*, supra. Therefore, I asked the Employer to make an offer of proof to the appropriateness of the petitioned-for unit and to the statutory jurisdiction of some of the petitioned-for employees. The Employer's offer of proof went beyond the designated factual scope, and, in view of Section 102.66(d), I instructed the hearing officer to decline to take evidence from the Employer except as relates to the statutory jurisdiction issue. I further instructed the hearing officer to decline to allow argument, including briefs, from the Employer. I hereby affirm those instructions based on Section 102.66(d) of the Board's Rules and Regulations.

On April 25, 2024, the Employer filed a Motion to Reconsider the decision to preclude the filing of a post-hearing brief. In its Motion, the Employer takes the position that Section 102.66(d)

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<sup>2</sup> For ease of reference the two groups at issue in the instant petition are postdocs in clinical placements, and postdocs receiving external funding.

does not bar a party from presenting a legal argument if that argument takes the form of a post-hearing brief. The Employer cites to no case, and I can find none, which supports this position. The Employer further argues that the Hearing Officer has a duty to ensure that the factual record is accurate and complete. I find that the Hearing Officer in this matter did so, including by examining an individual who would have been called by the Employer as a witness. Accordingly, the Employer's Motion is denied.

As set forth below, I find that Brown University does not employ any of the petitioned-for postdocs. Thus, I need not reach the matter of whether the petitioned-for postdocs share a community of interest with each other or with the postdocs in the existing unit, because I am dismissing the petition. However, I note that the record evidence is insufficient to establish whether a community of interest exists where the parties were unable to stipulate as to the precise composition of the existing unit.

## **FACTS**

### *Background, Procedural History, and Existing Unit*

Brown University is a non-profit research university which enrolls 11,000 students, including 3,100 graduate students. There are more than forty academic departments at Brown's six schools and colleges: the College, the Graduate School, the School of Engineering, the School of Professional Studies, the School of Public Health, and the Warren Alpert Medical School. The Warren Alpert Medical School includes the Department of Psychiatry and Human Behavior.

In January 2024, the Petitioner sought to represent a bargaining unit comprised of approximately 380 postdoctoral research associates, postdoctoral fellows, research fellows, and dean's faculty fellows.<sup>3</sup> That petition was withdrawn when the parties reached a card check agreement which covered many of the petitioned-for individuals. Some of the individuals covered by the instant petition were also covered by the previous petition, but the parties have not reached an agreement as to whether they should be included in the bargaining unit.

It is not disputed that the existing unit includes postdoctoral research associates and dean's faculty fellows. The postdoctoral research associates conduct research at Brown, and occasionally also have teaching responsibilities. They are appointed to their positions by Brown. Their research is directed by Brown's principal investigators, and they are paid a salary by Brown. The dean's faculty fellows are former Brown Ph.D. students who remain at Brown for an additional semester or year immediately after graduating in order to gain additional teaching experience. They are appointed by Brown and their work is overseen by Brown.

If all of the petitioned-for postdocs are added to the existing unit, the new unit will include all postdocs associated with Brown. Indeed, the Union initially sought to represent all postdocs

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<sup>3</sup> 01-RC-332644

associated with Brown, but Brown agreed to voluntarily recognize a unit consisting of only some of those postdocs.<sup>4</sup>

*Circumstances Common to All Postdocs*

Postdocs have met all requirements for their doctoral degrees, including successful defense of their doctoral dissertations. They are not students, although their work generally constitutes further training as researchers or healthcare providers.

Brown's Handbook of Academic Administration summarizes all policies, regulations and benefits that apply to faculty and administrators at Brown. Section 4.7.3 describes postdoctoral positions as follows:

The University makes a number of postdoctoral appointments that support its research mission. Such appointments are intended to enhance the academic and research development of the appointee. Postdoctoral appointees receive supervision and mentorship by a senior scholar, and are guaranteed freedom to publish. All postdoctoral appointments, since they are designed to support the academic development of the appointee, have limited terms; exceptions to term restrictions may be granted by the appropriate dean. All postdocs must hold the PhD (or equivalent).

Postdoctoral Research Associates and Fellows are individuals in the preparatory or learning stages of their careers who are appointed to meet particular and defined needs of a project or program under the supervision of a regular faculty member.

- Postdoctoral Research Associates are employees of the University: they receive a salary and all employee benefits for which they are eligible, and the grants which support them are assessed accordingly. Individuals are appointed to terms of one to three years, and may hold postdoctoral positions at Brown for a maximum of five years.
- Postdoctoral Research Fellows are employees of the university: they receive a salary that is reported as taxable wages. They do not receive a University contribution for benefits, but will always receive a stipend to cover the University's portion of an individual health insurance premium and may receive additional funds intended for benefits if their grant allows. Postdoctoral Research Fellow appointments should only be made when funding sources require such an appointment, as in the case of the Howard Hughes Hanna Gray Fellowship. Individuals are appointed to terms of one to three years, and may hold postdoctoral positions at Brown for a maximum of five years. Before appointing a PDRF, the appointing office must make sure that a source to pay the University's minimum fringe rate has been identified.

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<sup>4</sup> The record includes the initial card check agreement but does not set forth the details of the disputed classifications or their current status. During the hearing, the parties were unable to stipulate as to the precise composition of the existing unit.

- Postdoctoral Fellows are in residence to conduct research supported by fellowships; they are normally paid stipends. Most Postdoctoral Fellows are not Brown employees, but they may participate in a university health and dental plan. Individuals are appointed to terms of one to three years, and may hold postdoctoral positions at Brown for a maximum of five years.
  - A PDF-NRSA is an individual who has received National Research Service Award (NRSA) funding from the National Institutes of Health (NIH). This category includes both those receiving individual F32 fellowships and those receiving support from T32 institutional training grants. Per the terms of the award, PDF-NRSAs are not considered employees of the NIH or the University.
  - A PDF-Direct Pay is an individual appointed solely at Brown but paid by an external grant or fellowship that is not directed through the University payroll system. A PDF-Direct Pay is not considered an employee of the University.
  - A Postdoctoral Research Fellow (PDRF) Hanna Gray Fellows is considered an employee of the University and is eligible for a set of benefits. This appointment type only applies to recipients of the Hanna Gray Fellowship. Hanna Gray Fellowships support early career scientists and are funded by the Howard Hughes Medical Institute, a non-profit medical research organization.

Brown's postdoctoral website highlights events taking place both at Brown and across Rhode Island if those events might be of interest to postdocs. The version of the website entered into evidence by the Petitioner includes information about a postdoctoral research symposium. Dr. Audra Van Wart, Director of the University Postdoctoral Affairs,<sup>5</sup> confirmed that she attended the symposium and that both postdocs with clinical placements (petitioned-for postdocs) and postdocs without clinical placement (postdocs in the existing unit) made presentations at the symposium.

Brown has certain requirements of all postdocs regardless of whether it considers certain postdocs to be its employees. For example, during the Covid-19 pandemic all postdocs had to meet vaccination requirements. Similarly, all postdocs working in Brown's laboratories must undergo laboratory training. All postdocs are subject to many Brown policies, including the conflict of interest in research policy and the sexual and gender-based harassment and sexual assault policy. A postdoc who violates the sexual and gender-based harassment and sexual assault policy can be removed from the postdoc program regardless of official employment status.

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<sup>5</sup> Dr. Van Wart is also Associate Dean for Training and Program Development in the Division of Biology and Medicine and an Assistant Professor of Medical Science.

If a postdoc fellow is paid directly by a National Institutes of Health (NIH) grant, Brown cannot offer health insurance to that postdoc fellow because insurance providers do not permit Brown to do so. If a postdoc fellow is paid by an NIH grant which is processed through Brown, Brown offers health insurance to that postdoc fellow. However, Brown does not consider an externally funded postdoc fellow to be an employee where the NIH grant is attached to the individual postdoc rather than to a Brown professor who seeks the assistance of a postdoc.

Postdocs in the existing unit—that is, those postdocs Brown acknowledges as employees—receive 10 to 14 vacation days per year. Dr. Van Wart testified that her office will help non-employee postdocs mediate with their employers with respect to issues such as vacation time.

Brown's employee assistance program is available to postdocs regardless of whether Brown considers them to be Brown employees; Dr. Van Wart testified that she was recently able to get access for them. The EAP includes, among other services, up to ten therapy sessions.

All postdocs, regardless of their official employment status with Brown, also have access to Spring Health employee assistance program, which provides information about legal services, childcare services, and mental health services.

All postdocs, regardless of their official employment status with Brown, are able to participate in additional benefits offered through Brown, including mortgage assistance, automobile or homeowner's assistance, commuter choice, spending accounts, and long-term care.

All postdocs, regardless of their official employment status with Brown, can use their Brown ID as a RIFTA bus pass. They are also eligible to receive discounts through the BEAR discount program.<sup>6</sup>

#### *The Office of University Postdoctoral Affairs*

Dr. Van Wart, the Director of the University Postdoctoral Affairs, testified that at Brown, postdocs are hired into four different faculty affairs units: Engineering, Public Health, Arts and Sciences, and Division of Biology and Medicine.

According to its website, the Office of University Postdoctoral Affairs (OUPA) works to enhance the experience of Brown's postdoctoral scholars while partnering with Arts & Sciences, Biology, Engineering, and Public Health to appoint, support, and train the postdoctoral community. OUPA supports Brown postdoctoral scholars in their training and professional growth as they prepare for independent careers in academia, industry, and beyond. OUPA works together with the appointing departments, other Brown offices, and the Brown Postdoc Council to achieve this mission.

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<sup>6</sup> BEAR (Brown Employee Appreciation and Recognition) is a discount program for all members of the Brown community. A Brown ID Card allows staff, faculty, and students access to a variety of discounts and services in the Providence area and beyond.

Dr. Van Wart testified that while her office does not directly support or provide oversight for hospital-based postdocs, hospital-based postdocs are welcome at activities offered through her office. She added that anyone with a Brown affiliation is welcome to attend professional activities handled by her office although her office is funded to support postdocs paid through Brown.

Dr. Van Wart explained that when a department wants to hire a postdoc, the department submits paperwork to her office, which checks the candidate's academic credentials. When the academic credentials have been confirmed, Dr. Van Wart signs off and the new postdoc can be hired.

However, applications for postdocs who are paid not through Brown but through an affiliated hospital are not processed by Dr. Van Wart's office. Instead, those postdocs receive academic affiliation appointments through Faculty Affairs. Academic affiliation appointments grant access to various resources at Brown including e-mail and the library. Thus, while the Department of Psychiatry and Human Behavior is a clinical department organized within the Division of Biology and Medicine, postdoc applications for that department generally do not pass through Dr. Van Wart's office.<sup>7</sup> These are the hospital-based postdocs at issue in this matter.

When would-be postdocs receive external awards that will fund their positions, they seek faculty mentors to sponsor them. The faculty members' departments put in appointment requests which are approved by the sponsoring faculty members' deans. The individuals are then appointed as postdoctoral fellows. Although Brown sponsors these externally funded postdocs and the sponsoring professor has agreed to act as mentor to any given postdoc, Brown never receives the monies involved, as those monies are tied to the individual postdocs. There are the externally-funded postdocs at issue in this matter.

When investigators already employed by Brown receive grants which will fund postdoc positions, the jobs are posted and Brown hires new postdocs into the newly created positions. These positions are "Brown funded" rather than "externally funded" because the external money is paid to Brown for the purpose of hiring a postdoc rather than directly to a particular postdoc as an individual who chose to perform work at Brown. The funding ultimately originates from a variety of sources including the NIH, the Department of Defense, non-profits, and professional societies. Dr. Van Wart oversees and signs off on the appointments in the Division of Biology and Medicine, while other deans oversee and sign off on appointments in Engineering, Public Health, and Arts and Sciences. These postdocs are already included in the bargaining unit.

When Brown-affiliated hospitals (discussed in detail below) receive grants, the salaries stemming from those grants are dispersed to postdocs in clinical placements without ever passing through Brown. Dr. Van Wart testified that the training program advertises and recruits to fill positions in the hospitals affiliated with the training program. The hospitals themselves hire the

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<sup>7</sup> It is possible that a postdoc could be hired into the Department of Psychiatry and Human Behavior and be paid by Brown, and that individual's onboarding would be handled in part by Dr. Van Wart's office. The record does not explain how frequently this occurs in practice.

clinical fellows who will perform clinical work on their premises. The hospitals then submit requests to Brown so the newly hired postdocs can receive academic affiliate appointments.<sup>8</sup>

Both externally funded postdocs and clinical postdocs receive academic appointments at Brown. Dr. Van Wart testified that receiving an academic appointment at Brown as a postdoc is not the same as being hired outright by Brown as a postdoc. As will be detailed below, those with academic appointments are not paid by Brown, generally do not receive benefits from Brown, and generally are not directed in their work by Brown employees.

Dr. Van Wart explained in her testimony that newly hired postdocs hired directly by Brown are invited to orientation when they log into Workday, Brown's Human Resources system, for the first time. At orientation, these postdocs can learn about benefit options. Those postdocs who are not hired directly by Brown are not directed to sign up for an employment-based orientation through Workday.

OUPA runs quarterly welcome events for postdoctoral fellows. Brown University Human Resources offers benefits orientations for Brown-based postdocs but not hospital-based postdocs. Dr. Van Wart assumed, but did not know for certain, that the hospitals ran their own benefits orientations for hospital-based postdocs. Dr. Van Wart did not believe that hospital-based postdocs attend any welcome events alongside Brown-based postdocs.

Dr. Van Wart testified that Brown's stipend guidelines are the training program's stipend guidelines. Brown's stipend guidelines are listed on its website and are based on years of experience. In recent years, Brown has aligned its pay scale with NIH guidelines but it does not do so automatically; rather, there are periodic internal discussions at Brown as to whether the pay scale should align with the NIH pay scale. Sometimes faculty members have a reason to offer higher compensation to a particular postdoc, and they are permitted to do so.

Some departments have Brown-paid postdocs submit individual development plans that discuss their progress; this is not a formal evaluation tool but is intended to help the postdocs remain on track to meet their own goals. When a postdoc is paid directly by a fellowship, the faculty member does not track the postdoc's progress in this manner but could hypothetically terminate a mentor-mentee relationship where the postdoc refused to perform any work. Dr. Van Wart testified that clinical postdocs are evaluated in clinical settings by hospital employees. The evaluating hospital employees also have Brown faculty appointments although they are not paid by Brown.

#### *The Postdoctoral Fellowship Training Program*

The Department of Psychiatry and Human Behavior is chaired by Dr. Audrey Tyrka and vice chaired by Dr. Larry Brown, Dr. Tracey Guthrie, and Dr. Elizabeth McQuaid. Dr. McQuaid heads the Division of Clinical Psychology, which includes Clinical Psychology Training Programs at Brown: A Consortium of the Providence VA Medical Center, Lifespan, and Care New England.

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<sup>8</sup> A particular training grant awarded to Brown for suicide prevention research supports five to six postdocs in the psychiatry training program. These individuals are included in the existing bargaining unit.



The Postdoctoral Fellowship Training Program, headed by Dr. Elissa Jelalian, is organized beneath the Consortium.

The Postdoctoral Fellowship Training Program (PFTP) is a Brown University Department of Psychiatry and Human Behavior program, but is managed by a consortium of the Providence VA Medical Center, Lifespan Corporation (Lifespan), and Care New England (CNE) health care systems.

Dr. Van Wart testified that most postdoctoral training at Brown is not set up as training programs, but the PFTP, which operates in clinical spaces, is an exception. She explained that the PFTP training committee determines which applicants are appropriate for a slot in the program. The training committee is comprised of representatives of the different healthcare systems, although everyone who participates in the program has a Brown academic affiliation.

According to training manual, “the primary purpose of the PFTP is to provide training that assures the development of advanced competency in a specific area of clinical psychology (with emphasis on clinical research and clinical service), provide advanced research experiences, and promote the development of independent investigators. It is the philosophy of the PFTP that all postdoctoral fellows in clinical psychology should have both clinical and research exposure during their training. Postdoctoral fellows with non-clinical degrees may focus entirely on developing research skills.”<sup>9</sup>

The Providence VA Medical Center is a federal government hospital run by the Veterans' Administration.<sup>10</sup>

Lifespan Corporation operates several hospitals including the Rhode Island Hospital, the Miriam Hospital, and Emma Pendleton Bradley Hospital.

Care New England operates several hospitals including Butler Hospital, Women & Infants Hospital of Rhode Island, and Kent County Memorial Hospital.

The affiliation agreement between Brown and Care New England provides that they “intend to form a lasting partnership” which enhances their mutual strategic interests, improves functional and structural alignment, and “provides the financial support to achieve jointly held aspirations.” The affiliation agreement also explains that Brown designates Butler Hospital as “The Major Affiliated Teaching Hospital for Psychiatry and Behavioral Health of the Warren Alpert Medical School of Brown University.” The primary role for Butler Hospital is defined as follows:

The primary role of Butler in the Alpert Medical School’s academic programs shall be to provide the leadership role to the Medical School with respect to adult psychiatry and

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<sup>9</sup> Union Exhibit 5.

<sup>10</sup> The parties stipulate that the Veterans' Administration is an agency of the United States government and that the Board does not have jurisdiction over its employees.

human behavior, a leadership role with respect to substance abuse and addictive behaviors; the leadership role in the training of adult psychology and psychiatry residents and fellows (because of which residents and fellows may be placed in all facilities as may be determined appropriate and beneficial by the program directors); a leadership role with respect to all other psychiatry and behavioral health, other than child and adolescent; a leadership role in programs and centers associated with brain and behavior, particularly memory loss and Alzheimer's; and a leadership role in neuropsychiatry, geriatric psychiatry and behavioral neurology. Butler shall provide a facility at which Faculty can perform an integrated program of clinical care, teaching and research. Butler shall provide facilities and support to advance such education and research in relevant medical disciplines, as provided herein. Butler shall also maintain such primary, secondary and tertiary care services as are necessary and appropriate to meet the Hospital's patient care needs, and as will complement and enhance the Medical School's education and research programs. More specifically, it is agreed that Butler will maintain clinical/academic programs in Psychiatry and Behavioral Medicine. Brown recognizes Butler as the sponsor for the General Psychiatry Residency Training Program and all Psychiatry Fellowships of the American Board of Psychiatry and Neurology except for Child and Adolescent Residency.<sup>11</sup>

Brown is held responsible for all academic programs and designates CNE's hospitals, including Butler Hospital, as teaching affiliates of the Alpert Medical School. The agreement states that "no Brown student will receive instruction at any clinical site of any Existing CNE Entity or any Brown Affiliated Entity except from physicians who have faculty appointments at Brown, and each physician who teaches medical students, residents, and fellows in programs affiliated with the Medical School at any clinical site of any Existing CNE Entity or any Brown Affiliated Entity must have an appointment to the Faculty." Further, "Hospital-based Faculty are expected to participate in the academic programs sponsored by the University, which include undergraduate college and Medical School as well as post-graduate education and research." Such faculty are directly employed by CNE's hospitals. New faculty members receive letters from Brown notifying them of their appointment to the faculty and letters from the employing hospitals notifying them of their terms of employment. Hospitals review faculty members' clinical performances while Brown reviews faculty members' academic performances.

Finally, the agreement emphasizes that hospital-based faculty are not employees of Brown University:

Independent Roles. Faculty appointment by Brown shall not be construed as Brown employment of Hospital-based Faculty, and no person employed by the applicable Hospital shall by virtue of this Agreement be deemed to be an employee of Brown; nor shall Brown have any liability for his/her compensation, benefits, taxes, or expenses of employment, or be liable for his/her conduct or for claims by such persons or others relating to his/her employment or the termination thereof.

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<sup>11</sup> Board exhibit 8.

The affiliation agreement between Brown and Lifespan is similar to the affiliation agreement between Brown and Care New England. The Lifespan agreement lays out an intention to transition certain faculty from Lifespan employee status to Brown employee status:

It is the parties' intent, as soon as practicable, to effect an orderly transition from Hospital employment to University employment of Department Chairs, Division Chairs, and selected other key Faculty to be identified by Brown, including those with significant administrative or supervisory responsibility for educational research programs at Lifespan hospitals, subject to an agreement by the Foundation to reimburse Brown for a portion of the costs. All such appointments shall be made in accordance with applicable Brown University guidelines and procedures.<sup>12</sup>

However, the affiliation agreement between Brown and Lifespan also explains that hospital-based faculty are not employees of Brown University; that Lifespan is responsible for setting the hospital-based faculty's terms and conditions of employment; and that Lifespan alone will evaluate hospital-based faculty's clinical work.<sup>13</sup>

A Training Committee, which is overseen by Dr. Elissa Jelalian, coordinates the Postdoctoral Fellowship Training Program's policies and goals.<sup>14</sup> The PFTP has four divisions: the Clinical Psychology Program, the Clinical Child Psychology Specialty Program, the Clinical Neuropsychology Specialty Program, and the Research Fellowship Program.

The PFTP maintains records, including performance evaluations, of all current postdoctoral fellows and alumni. All postdoctoral fellows currently in training have an active file stored on Brown's secure server. The record includes the postdoctoral program application; individualized training activities; and a postdoctoral fellowship description.

The PFTP's Training Committee receives applications seeking to create new positions from Providence VA Medical Center, Lifespan Corporation, or Care New England. The Training Committee decides whether to approve a proposed position. Approved positions are posted on a website. When interested individuals apply for a posted position, they are vetted primarily by individuals employed Providence VA Medical Center, Lifespan Corporation, or Care New England, but a Brown employee may be involved in the vetting process as well. The Training Committee makes the final decision as to which applicants will be selected.

The PFTP consists of both research fellowships and clinical fellowships. As of January 2024, there were 37 participants in the Research Fellowship Program, of whom twelve were

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<sup>12</sup> Board exhibit 9.

<sup>13</sup> The agreement between the Providence VA Medical Center and Brown is not in the record.

<sup>14</sup> Dr. Jelalian is a staff psychologist in the Department of Child and Family Psychiatry at Rhode Island Hospital (operated by Lifespan) and is also listed on Brown's website as a professor in Brown's Department of Psychiatry and Human Behavior.

investigator-funded and 25 were institutionally funded by the NIH. There were 23 participants in the three clinical fellowship programs: eleven in the Clinical Psychology Program; five in the Clinical Child Psychology Specialty Program; and seven in the Clinical Neuropsychology Specialty Program.

Academic Affiliations

The individuals who supervise and manage the postdocs in clinical placements are often associated both with a health care system and with Brown University. This does not, however, mean that these individuals are employed by both entities.

An academic affiliation appointment (sometimes called a faculty appointment) grants access to various resources at Brown including e-mail and the library. Many individuals employed by the health care systems which work in conjunction with Brown University are granted such appointments. These individuals are not employed by Brown. They do not receive payment from Brown and they do not provide services to Brown except indirectly through the health care systems which employ and compensate them.

Dr. Koveleskie and Care New England (Butler Hospital)

Dr. Michaela Koveleskie is a postdoctoral fellow in the Department of Psychiatry and Human Behavior at Brown's Warren Alpert Medical School. She applied for her present position after seeing it posted on the Association of Psychology Postdoctoral and Internship Centers (APPIC) website; the position was also cross-posted to Brown's website. She submitted her application through the APPIC's portal and submitted a letter of interest and additional information to Dr. Davis, a neuropsychologist who is a member of the Brown faculty. Dr. Megan Spencer and Dr. Nicole McLaughlin, also neuropsychologists on the Brown faculty, contacted Dr. Koveleskie to offer her interviews for two separate positions. Dr. McLaughlin later contacted Dr. Koveleskie to offer her the position in in geriatric neuropsychology; Dr. Koveleskie accepted the offer.

Dr. Koveleskie received a letter dated January 24, 2022, signed by Dr. Stephen Correia, who was then the director of the Clinical Neuropsychology Specialty Program and was listed as faculty at Brown. The letter is written on Brown Alpert Medical School stationary and is copied to Dr. Elissa Jelalian. The letter states, in part:

I am writing to confirm your postdoctoral fellowship with the Alpert Medical School of Brown University, in the Postdoctoral Fellowship Training Program's Clinical Neuropsychology Specialty Program, for the 2022-2023 academic year. We are pleased that you have elected to complete your fellowship training at Brown. You will receive specific information on start date, salary, and benefits from the hospital to which you have been assigned.

We expect your stipend will be \$53,760 (subject to change based on VHA and NIH guidance) for a full-time, one-year position. A second year of fellowship is contingent on our mutual interest in the second year of training and continued funding.

As a Postdoctoral Fellow in the Department of Psychiatry and Human Behavior (DPHB) at Brown University, you will receive a letter of appointment from Brown advising you of your appointment as a Research Fellow in Clinical Psychology. The title “Research Fellow” is your official Brown University title. “Postdoctoral Fellow” is your DPHB and hospital title. Your official term of appointment is determined through the Postdoctoral Fellowship Training Program...

There will be a mandatory orientation to the Postdoctoral Fellowship Training Program scheduled for September 7, 2022. Please mark your calendar!

So that we may begin to make necessary arrangements for your Brown appointment, kindly complete and return the enclosed forms to confirm your acceptance of this offer....

Dr. Van Wart testified that the letter received by Dr. Koveleskie did not pass through her office because Dr. Koveleskie was not hired by Brown University. Dr. Van Wart testified that someone who was paid by a Brown training grant would receive a training grant letter offering a position and then a separate letter from Brown offering an appointment. In contrast, Dr. Van Wart testified, an individual in Dr. Koveleskie’s position would receive a letter like the one described above offering an appointment to a training slot and then a separate letter from the involved hospital offering employment.

Dr. Koveleskie’s work location is Butler Hospital, a psychiatric hospital operated by Care New England. She works in the senior specialty inpatient unit there by providing neuropsychological evaluations to older adults. She also conducts outpatient evaluations within the memory and aging program at Butler. The ultimate goal of her position is to prepare her to be a clinical neuropsychologist or a faculty member at a university.

Dr. Koveleskie testified that when she accepted her position, she communicated only with Dr. Nicole McLaughlin.<sup>15</sup>

Upon accepting the position, Dr. Koveleskie received paperwork on Brown Alpert Medical School letterhead which instructed her to email a photograph to Brett Requentina, who performs administrative work for the Department of Psychiatry and Human Behavior at Brown. The

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<sup>15</sup> Dr. Koveleskie testified that Dr. McLaughlin is employed by Brown University. Dr. Van Wart testified that Dr. McLaughlin, contrary to Dr. Koveleskie’s assertions, is not a Brown employee. Rather, Dr. McLaughlin is a Care New England (Butler Hospital) employee who has only an academic appointment with Brown. Dr. McLaughlin receives no salary or other financial compensation from Brown. Thousands of physicians in the Rhode Island region have such appointments with Brown, meaning that they are technically members of the Brown faculty but are not employed by Brown.

Because Dr. Van Wart is well-positioned to have information relating to Dr. McLaughlin’s employment status and an understanding of the difference between an academic appointment and formal employment, I rely on Dr. Van Wart’s testimony.

photograph was used for her Brown ID. She also received a Brown email address and verified to Brown that she had completed her doctorate.

Dr. Koveleskie was invited to attend a postdoctoral fellowship orientation which included all postdocs in Brown's Department of Psychiatry and Human Behavior regardless of the location of their clinical placement. Orientation topics included loan deferment, handling of media requests, anti-racism, working outside fellowships, and attendance at didactics. A didactic is a presentation which furthers a postdoc's training, including by presenting recent research. All postdoctoral fellows at Brown are required to attend at least some didactics. Dr. Koveleskie herself has presented at a postdoctoral research symposium, which are attended by any interested postdocs regardless of those postdocs' funding sources or work locations.

Dr. Koveleskie was also selected as a fellow representative for the 2022-2023 training year. A fellow representative acts as liaison between fellows in a given program and communicates any concerns to the Training Committee. The notification that Dr. Koveleskie had been selected as a fellow representative came from Brett Requentina, the Brown-employed administrator. Dr. Koveleskie is reimbursed for purchases made while acting as a fellow representative; she submits the receipts to Brett Requentina at Brown, but ultimately receives a check from Care New England. As part of her position, she must run the Brown clinical psychology training Instagram account; schedule social events which may be attended by any postdoc in her department at Brown; and coordinate activities such as licensing exams.

On a day-to-day basis, Dr. Koveleskie is supervised and directed by Dr. McLaughlin. Dr. McLaughlin tells Dr. Koveleskie when she will work and approves Dr. Koveleskie's leave requests.

Dr. Koveleskie works at Butler Hospital and has an office there; she works alongside Dr. McLaughlin and other trainees, including Brown Medical School residents. Dr. Koveleskie sometimes teaches the Brown Medical School residents about neuropsychology. Dr. Koveleskie does not have an office on Brown's campus. She received minimal orientation at Butler Hospital which was limited to the medical record system.

Dr. Koveleskie did not know the details of how her position is funded. Her paycheck reads "Care New England" and she receives health benefits through Care New England. Her continued employment is by mutual agreement between herself and Dr. McLaughlin. Dr. McLaughlin also takes part in Dr. Koveleskie's "competency plan," which lists goals and methods of evaluation.

The rules and regulations for academic appointments are posted on Brown's Division of Biology and Medicine website. In general, a doctor applies for an academic faculty appointment when their work plays some role in the academic mission of Brown University. For example, Brown's clinical training programs are run by individuals who work in hospitals.

Those individuals who have only academic appointments are considered to be Brown faculty but not Brown employees. Non-employee faculty receive Brown University credentials, which grant them access to Brown's libraries and journal subscriptions. While they may take part

in some training programs at the University, they are paid for any work performed not by Brown but by their employers (such as Butler Hospital).

The postdocs in the existing bargaining unit are mentored by individuals who are Brown employees, rather than by individuals who are employed by hospitals and have only academic appointments with Brown.

*Dr. Neville and Lifespan (Rhode Island Hospital)*

Dr. Sarah Neville is a postdoctoral research fellow. She is one of several postdocs who comprise an HIV research group headed by Dr. Larry Brown, a psychiatrist at Rhode Island Hospital who is also appointed in the Brown Medical School. Although Dr. Brown is appointed in the Brown Medical School, he is not an employee of Brown University. Dr. Neville applied for the position when she saw it posted on Brown's website; in order to apply she had to utilize the same APPIC portal used by Dr. Koveleskie.

Dr. Neville received a letter dated January 26, 2022, which was signed by Dr. Larry Brown and issued under a Brown Alpert Medical School letterhead. It states, in part:

I am writing to offer you a postdoctoral fellowship at the Alpert Medical School of Brown University NIMH Institutional Research Training in Adolescent/Young Adult Biobehavioral HIV Research for the 2022-2023 academic year. Your primary responsibility will be participation in ongoing research activities.

The position runs on an annual basis, and we expect the first year stipend to be \$53,760 (subject to change based on VHA and NIH guidance) ... The fellowship includes standard hospital benefits, such as health and dental insurance, vacation, holiday and sick time. You can expect to receive specific information on start dates, salary, and benefits directly from Rhode Island Hospital...

There will be a mandatory orientation to the Postdoctoral Fellowship Training Program scheduled for September 7, 2022. Please mark your calendar!

So that we may begin to make necessary arrangements for your Brown appointment, kindly complete and return the enclosed forms to confirm your acceptance of this offer.

Dr. Van Wart testified that the mandatory PFTP training was related to the specific training grant, which regarded HIV research. That is to say, the orientation referenced by the letter is not an employment orientation; rather, it is a training orientation. Dr. Van Wart added that while one HIV research position is awarded through Brown, that position is not Dr. Neville's position. However, Dr. Van Wart did not know whether the two individuals would attend the same grant-specific orientation.

Dr. Neville testified that she never received an offer letter from Rhode Island Hospital or Lifespan. When she accepted her current position, she communicated her acceptance to Dr. Larry

Brown. She was officially hired by Rhode Island Hospital and is part of their employment system. She receives Rhode Island Hospital benefits.

Dr. Neville sometimes works in-person at the School of Public Health at Brown University but usually teleworks. She does not have an office at the School of Public Health and rarely works with other postdoc fellows. Although her paychecks are issued by Lifespan or Rhode Island Hospital, she is rarely physically present at Rhode Island Hospital and testified that she performs no services for Rhode Island Hospital. Her position is funded by an NIH grant known as a T-32. She testified that the purpose of the grant is to improve the postdocs' research skills. She explained that she takes advantage of the training environment at Brown to work on her own research projects with the ultimate goal of making herself an attractive applicant for a faculty position. She seeks to obtain her own NIH grant.

She testified that although she provides no services for Rhode Island Hospital, she is paid by them because Dr. Brown received the T-32 HIV training program grant from NIH so he could be the director of a program that trains HIV researchers. The grant is disbursed to Rhode Island Hospital, which Dr. Neville views as a financial intermediary.

Dr. Neville testified that the Brown University Department of Psychiatry and Human Behavior manages her day-to-day experience as a postdoc by holding orientations, running weekly seminars, and setting training goals. She has a Brown ID, a Brown email address, access to Brown libraries, and the ability to receive Brown employee discounts.

When Dr. Neville sought to extend her postdoctoral research fellowship by a year, Dr. Brown ultimately made the decision to approve the extension. However, the suggestion to extend the fellowship originated with Dr. Neville's primary mentor Dr. Omar Galarraga, a professor at the School of Public Health. Dr. Neville testified that she does not believe that Rhode Island Hospital can terminate her employment because Dr. Galarraga is responsible for her evaluations.

Dr. Galarraga has no hospital appointments. Dr. Neville testified that Dr. Galarraga functions as her supervisor, including by evaluating how well she has achieved her goals, by setting her hours, and by approving her leave requests, and by making sure that her work aligns with the grant.

*Dr. Gilmer and Externally Funded Postdoctoral Fellows*

As was discussed above, the existing collective-bargaining unit includes postdoctoral research associates who conduct research at Brown. Their research is directed by Brown's principal investigators and they are paid a salary by Brown.

The Employer takes the position that postdoctoral fellows who conduct research but are externally funded should not be added to the bargaining unit because they are not employed by Brown. These postdoctoral fellows are associated with a variety of Brown's academic departments.

Dr. Van Wart testified that a postdoc research associate who is a member of the bargaining unit is mentored and supervised by a faculty member. The faculty member bears



some responsibility toward the postdoc's continued academic development because the postdoc is in a temporary position with the goal of professional development. By contrast, postdocs who come to Brown already attached to external fellowships which pay them directly to perform their own research are not directed by faculty members, although faculty members may act in mentorship roles. There is no assessment process or formal evaluation process for any postdocs. However, if postdocs whose funding flows through Brown stop performing their experiments, the supervising professor would make the determination that they had fallen out of compliance with the funding mechanism.

The only externally funded postdoctoral fellow to testify at the hearing was Dr. Humberto Gilmer, who is a postdoctoral research fellow in Brown's Department of Physics. His position is funded by the National Science Foundation, a congressionally authorized body that funds research efforts throughout the United States.

The award which funds Dr. Gilmer's research was made directly to Dr. Gilmer as an individual. Solicitation of the award required Dr. Gilmer to designate a faculty sponsor. A colleague at the Ohio State University, where Dr. Gilmer completed his graduate work, connected Dr. Gilmer with Dr. Stephon Alexander. Dr. Alexander, a professor of physics at Brown, agreed to become Dr. Gilmer's faculty sponsor. Together, Dr. Gilmer and Dr. Alexander authored a plan of research along with a breakdown of how Dr. Gilmer would use allocated funds.

A June 2022 letter, signed by Senior Associated Dean Joel Revill and appointing Dr. Gilmer to his current position reads, in part:

I write to inform you that on the recommendation of Professor Gang Xiao, Chair of the Department of Physics, you shall be appointed as Postdoctoral Fellow in Physics, effective September 1, 2022, through August 31, 2025. It is my understanding that this appointment carries no salary or benefits from Brown University. This appointment is contingent upon receipt of a Ph.D. prior to September 1, 2022. Please provide proof that you have completed your degree as soon as possible...

All appointments at Brown University are subject to certain conditions set by the Corporation. Please familiarize yourself with the Faculty Rules and Regulations and with the Handbook of Academic Administration... All members of the Brown community must also comply with the University's Sexual and Gender-based Harassment and Violence policy...

If the terms of this appointment are satisfactory as outlined, please indicate your acceptance by signing this letter within 30 days of the date of this letter and by delivering it to the department manager in your assigned academic unit.

Dr. Gilmer's office is located in Brown University's Barus Building. He shares his office with a postdoctoral researcher who is a member of the existing bargaining unit. He interacts with members of the Department of Physics both socially and professionally daily. Dr. Gilmer also interacts with undergraduate students who are working on a research project under the direction of Dr. Alexander. If the research delves into a topic not covered by the undergraduates' classes, the

students ask Dr. Gilmer for clarification, and he teaches them about the topic. On very rare occasion—approximately once per semester—Dr. Gilmer fills in for Dr. Alexander, including by teaching one class in quantum field theory.

Dr. Gilmer’s paychecks are issued by the National Science Foundation, but he testified that he performs no work for the National Science Foundation. Taxes are not deducted from his checks because they are considered research funding rather than employment. He does not receive benefits through the National Science Foundation and is prohibited from receiving benefits through Brown University.

Dr. Gilmer makes an annual report to the National Science Foundation which explains that he is using his funds in accordance with their agreement. He outlines research products, papers published, talks given, and how those align with his stated goals. Dr. Alexander helps edit the annual report, but does not sign off on it. The National Science Foundation accepted Dr. Gilmer’s most recent report and offered commentary on the diversity and outreach portion. Dr. Alexander does not formally evaluate Dr. Gilmer, whose position is guaranteed for three years.

## **ANALYSIS AND CONCLUSIONS**

### *Employment Status of Externally Funded Postdoctoral Fellows*

Although Act does not itself define the term “employee,” it is well established that the Board relies upon on the common-law definition of employment, which “generally requires that the employer have the right to control the employee’s work, and that that work be performed in exchange for compensation,” *Columbia University*, 364 NLRB 1080 (2016).

When the Board denied review of the dismissal of the petition in *Massachusetts Institute of Technology* (01-RC-304042), it held that the petitioned-for fellows in that case:

do not perform work controlled by the Employer in exchange for compensation. Rather, they perform research (or, occasionally, teach) to further their own academic purposes and are provided with funding to do so regardless of whether their activities also benefit the Employer. The Regional Director therefore correctly found that the record shows that most of the fellows “must meet no employment responsibilities or service requirements to receive or maintain their fellowship awards.” Accordingly, the Regional Director properly dismissed the petition. See *Columbia University*, 364 NLRB 1080, 1094 & 1096-1097 (2016) (distinguishing student assistants satisfying the common-law employment standard from nonemployees who “simply pursue their educational goals at their own discretion, subject only to the general requirement that they make academic progress”).

Externally funded postdoctoral fellows are not compensated for their work by Brown. For example, Dr. Gilmer’s paychecks are issued by the National Science Foundation, not by Brown. Nor is Dr. Gilmer eligible to receive benefits from Brown.

It is to the National Science Foundation, not Brown, that Dr. Gilmer sends his annual reports; it is the National Science Foundation, not Brown, that accepts and evaluates those reports. Dr. Gilmer receives no formal evaluation whatsoever from his Brown-employed faculty sponsor, Dr. Alexander, as the National Science Foundation guaranteed his funding for three years at the onset of his award.

Neither Dr. Alexander nor any other agent of Brown controls or directs Dr. Gilmer's research. Brown does not, directly or indirectly, compensate Dr. Gilmer for his research.

Accordingly, I find that externally funded postdoctoral fellows are not employed by Brown University, and for that reason they cannot be added to the existing bargaining unit.

*Postdoctoral Fellows with Clinical Placements as Hospital Employees*

The record evidence establishes that postdoctoral fellows with clinical placements are employed by the Brown-affiliated hospitals which manage the Postdoctoral Fellowship Training Program.

For example, Dr. Michaela Koveleskie works in the senior specialty inpatient unit at Butler Hospital, which is operated by Care New England. Dr. Nicole McLaughlin, a Care New England employee who has an academic appointment with Brown (but is not employed by Brown), interviewed Dr. Koveleskie and offered her the position she currently fills. Dr. McLaughlin continues to supervise Dr. Koveleskie and evaluate her work. Dr. McLaughlin also determines whether Dr. Koveleskie should remain in her current position. Dr. Koveleskie receives both paychecks and health benefits through Care New England.

Likewise, Dr. Sarah Neville is one of several postdocs who comprise an HIV research group headed by Dr. Larry Brown, a psychiatrist at Rhode Island Hospital. Rhode Island Hospital is operated by Lifespan. When Dr. Neville accepted her current position, she communicated her acceptance to Dr. Larry Brown. Dr. Neville's paychecks are issued by Lifespan or Rhode Island Hospital; she is part of their employment system; and she receives Rhode Island Hospital benefits. When Dr. Neville sought to extend her postdoctoral research fellowship by a year, Dr. Brown ultimately made the decision to approve the extension.

Because Dr. Koveleskie and Dr. Neville are compensated for their work by Butler Hospital and Rhode Island Hospital respectively, and because agents of Butler Hospital and Rhode Island Hospital determine whether their work warrants remaining in their present positions, I find that they are employees of the Brown-affiliated hospitals which manage the Postdoctoral Fellowship Training Program.

No postdoctoral fellow with a clinical placement at the Providence VA Medical Center testified at the hearing. However, Dr. Van Wart testified that all postdoctoral fellows with clinical placements are compensated through those placements, and I rely on her testimony here.

The Petitioner argues that even if the postdoctoral fellows with clinical placements are employees of the hospitals at which they are working, Brown University is a joint employer of those postdoctoral fellows. I will address this argument below.

*Postdoctoral Fellows with Clinical Placements at the Providence VA Medical Center*

Having determined that the postdoctoral fellows with clinical placements are employees of the Brown-affiliated hospitals with which they are associated, I conclude that those postdoctoral fellows who are employees of the Providence VA Medical Center cannot be included in the existing collective-bargaining unit. Both parties have stipulated, and I find, that the Veterans' Administration is an agency of the United States government and that the Board does not have jurisdiction over its employees.

*Joint Employment Status of Lifespan and CNE Postdocs*

Section 103.40(a) of the Board's Rules and Regulations sets forth the applicable standard for assessing joint employer status:

An employer, as defined by Section 2(2) of the National Labor Relations Act (the Act), may be considered a joint employer of a separate employer's employees only if the two employers share or codetermine the employees' essential terms and conditions of employment. To establish that an entity shares or codetermines the essential terms and conditions of another employer's employees, the entity must possess and exercise such substantial direct and immediate control over one or more essential terms or conditions of their employment as would warrant finding that the entity meaningfully affects matters relating to the employment relationship with those employees.

29 CFR § 103.40(a).

The Rule defines "essential terms and conditions of employment" as "wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction." *Id.* § 103.40(b). It also makes clear that for substantial direct and immediate control to "meaningfully affect matters relating to the employment relationship with those employees," the actions must have a regular or continuous consequential effect on an essential term or condition of employment. *Id.* § 103.40(d). The Rule also requires that the Board determine joint-employer status based on "the totality of the relevant facts in each particular employment setting," and places the burden of proof on the party asserting a joint-employer relationship. *Id.* § 103.40(a), (d). A joint-employer relationship therefore exists where an employer, while contracting in good faith with an otherwise independent company, has retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer. *Cognizant Tech. Sols. U.S. Corp.*, 372 NLRB No. 108 (July 19, 2023) (citing *Walter B. Cooke Inc.*, 262 NLRB 626 (1982)).

In 2023, the Board issued a final rule updating its standard for joint employment, and the rule was to go into effect in March 2024. 29 C.F.R. § 130.40. However, that month the District Court for the Eastern District of Texas issued an order vacating the rule and reinstating the Board's

2020 joint employer rule. *Chamber of Commerce v. NLRB*, -- F. Supp. 3d --, 2024 WL 1203056 (March 8, 2024). The Board is no longer appealing that decision, although it has announced that it is considering options for addressing the outstanding joint employer matters before it. Accordingly, I will evaluate the situation before me under the 2020 rule.

Below I address the specific facts for each essential term of employment.

- Wages

“An entity exercises direct and immediate control over wages if it actually determines the wage rates, salary or other rate of pay that is paid to another employer’s individual employees or job classifications.” 29 C.F.R. § 130.40(c)(1). Brown takes NIH guidelines into account when determining pay for the postdocs it employs undisputedly, and Lifespan and CNE may do the same. However, the record reveals no evidence that Brown in any way dictates the postdocs’ rates of pay to Lifespan or CNE. This factor weighs against a finding of joint employment status.

- Benefits

“An entity exercises direct and immediate control over benefits if it actually determines the fringe benefits to be provided or offered to another employer's employees. This would include selecting ... level of benefits provided to another employer's employees.” 29 C.F.R. §130.40(c)(2).

Dr. Koveleskie and Dr. Neville receive their benefits through CNE and Lifespan respectively. The record reveals no evidence that Brown has any influence over the level of benefits provided by CNE or Lifespan to their employees. This factor weighs against a finding of joint employment status.

- Hours of Work

“An entity exercises direct and immediate control over hours of work if it actually determines work schedules or the work hours, including overtime, of another employer's employees.” 29 C.F.R. § 130.40(c)(3).

Dr. Koveleskie’s work hours are dictated by the needs of Butler Hospital and its employee Dr. McLaughlin. The record reveals no indication that any agent of Brown sets Dr. Koveleskie’s work hours.

Dr. Koveleskie testified to her belief that Dr. McLaughlin is an employee of Brown because Dr. McLaughlin is a faculty member there. However, Dr. Van Wart testified that Dr. McLaughlin is a Care New England (Butler Hospital) employee who has only an academic appointment with Brown. Dr. McLaughlin receives no salary or other financial compensation from Brown. AS noted earlier, because Dr. Van Wart is well-positioned to have information relating to Dr. McLaughlin’s employment status and an understanding of the difference between an academic appointment and formal employment, I rely on Dr. Van Wart’s testimony.

Dr. Neville testified that her work hours are set by Dr. Galarraga, who does not have an hospital appointment. Because neither Dr. Galarraga nor Dr. Brown testified, it is unclear to what extent Dr. Galarraga determines Dr. Neville's hours as opposed to communicating that determination to Dr. Neville.

The evidence for this factor is mixed. It weighs against a finding of joint employment status for Care New England postdocs and in favor of a finding of joint employment status for Lifespan employees.

- Hiring

“An entity exercises direct and immediate control over hiring if it actually determines which particular employees will be hired and which employees will not.” 29 C.F.R. §130.40(c)(4).

At least some postdocs with clinical placements apply for their positions through Brown's website, and on at least some occasions an employee of Brown takes part in the interview process. Letters confirming offers of postdoctoral fellowships also issue on Brown letterhead. However, the record reveals insufficient evidence to suggest that Brown actually determines which postdocs will be hired and which will not. No individual who was responsible for hiring a postdoc testified, and so the record is not clear on this point. However, Dr. Koveleskie's testimony suggests that Dr. McLaughlin chose to hire her, and Dr. Neville's letter offering employment was signed by Dr. Brown. Neither Dr. McLaughlin nor Dr. Brown is an employee of Brown University.

This factor weighs against a finding of joint employment.

- Discharge

“An entity exercises direct and immediate control over discharge if it actually decides to terminate the employment of another employer's employee. An entity does not exercise direct and immediate control over discharge by bringing misconduct or poor performance to the attention of another employer that makes the actual discharge decision, by expressing a negative opinion of another employer's employee, by refusing to allow another employer's employee to continue performing work under a contract, or by setting minimal standards of performance or conduct, such as those required by government regulation.” 29 C.F.R. § 130.40(c)(5).

There is no direct evidence in the record regarding the discharge of any postdoc. Dr. Neville speculated in her testimony that because Dr. Galarraga writes her performance evaluations, Dr. Galarraga would be able to terminate her on behalf of Brown University while Dr. Brown would not be able to terminate her on behalf of Lifespan. However, where there is no non-speculative evidence of any kind in the record, this factor cannot weigh in favor of a finding of joint employment.

- Discipline

“An entity exercises direct and immediate control over discipline if it actually decides to suspend or otherwise discipline another employer's employee. An entity does not exercise direct and immediate control over discipline by bringing misconduct or poor performance to the attention of another employer that makes the actual disciplinary decision, by expressing a negative opinion of another employer's employee, or by refusing to allow another employer's employee to access its premises or perform work under a contract.” 29 C.F.R. § 130.40(c)(6).

The record reveals no evidence that Brown has ever disciplined a postdoc. To the extent that Dr. Koveleskie’s “competency plan,” can be viewed as discipline, Dr. McLaughlin appears to have been the author.

This factor cannot weigh in favor of a finding of joint employment where there is no definitive evidence in the record.

- Supervision and Direction

“An entity exercises direct and immediate control over supervision by actually instructing another employer's employees how to perform their work or by actually issuing employee performance appraisals.” 29 C.F.R. § 130.40(c)(7).

Further, “An entity exercises direct and immediate control over direction by assigning particular employees their individual work schedules, positions, and tasks.” 29 C.F.R. § 130.40(c)(8).

While Dr. Koveleskie’s work is directly supervised by hospital employee Dr. McLaughlin, Dr. Neville’s work is directly supervised by Dr. Galarraga, who does not have a hospital appointment, but is an employee of Brown.

Accordingly, evidence for these factors is mixed. The evidence weighs against a finding of joint employment status for Care New England postdocs and in favor of a finding of joint employment status for Lifespan postdocs.

- Joint Employment Conclusion

In sum, none of the factors weigh in favor of a finding that Brown University is a joint employer of Care New England postdocs. There is limited evidence which supports the finding that Brown is a joint employer of at least some Lifespan postdocs, in that Dr. Neville is supervised by Dr. Galarraga. However, this evidence is insufficient to find that Brown is a joint employer where Lifespan, and Lifespan alone, determines wages and benefits for the postdocs who work in Lifespan’s facilities and under the umbrella of Lifespan’s researchers. I find that the Petitioner has not met its burden of establishing that Brown University is a joint employer of Lifespan postdocs.

*The Petitioner's Argument*

In arguing that Brown is the sole employer of the petitioned-for postdocs, the Petitioner argues that the postdocs' work discovering knowledge advances Brown's stated mission, and that all postdocs are therefore employed by Brown. The Board considered and rejected a similar argument raised in *Massachusetts Institute of Technology* (01-RC-304042) when it denied review of the dismissal of that petition. The discovery of knowledge in a university setting does not automatically grant employee status to those who make those discoveries.

The Petitioner further argues that postdocs interact with Brown students by answering their questions, and therefore provides a service to Brown. However, there is insufficient evidence in the record to establish that Brown directs or requires these interactions, let alone that Brown compensates the postdocs for these conversations.

Next, the Petitioner relies on the premise that all postdocs are supervised by Brown employees. As was discussed above, the record does not support this premise.

Finally, the Petitioner argues that the clinical programs do not benefit from the postdocs' work. There is insufficient evidence in the record to support this assertion. It seems unlikely that, for example, Butler Hospital does not benefit when Dr. Koveleskie conducts neuropsychological evaluations of older adults while working on Butler Hospital's premises under the supervision of a Butler Hospital employee.

In arguing that Brown is a joint employer of the postdocs, the Petitioner asserts that Dr. McLaughlin hired Dr. Koveleskie on behalf of Brown, although the record suggests that Dr. McLaughlin is not employed by Brown. The Petitioner further argues that Dr. Alexander hired Dr. Gilmer on behalf of Brown, although the record suggests that "sponsorship" and "hiring" are two distinct processes and that Dr. Alexander has no control over Dr. Gilmer's work or his monetary compensation, which stems from a grant that never flowed through Brown. Finally, the Petitioner states that as a Brown employee, Dr. Galarraga made the decision to extend Dr. Neville's fellowship, while the record suggests that that decision ultimately lay with Dr. Brown, who is not a Brown employee.

The Petitioner also argues that Brown controls the postdocs' pay and benefits by requiring that postdoctoral compensation meets the NIH minimum pay scale. However, the record does not suggest that Brown always meets the NIH payscale for postdocs it considers to be its own employees, let alone for postdocs it views as employees of another entity.

*Conclusion*

Having found that the petitioned-for postdoctoral fellows with clinical placements in the Department of Psychiatry and Human Behavior, and postdoctoral fellows receiving external funding, are not employees of Brown University, I shall dismiss the petition.



## **ORDER**

IT IS HEREBY ORDERED that the petition is dismissed.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. 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. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **January 6, 2025**, unless filed electronically. If 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 January 6, 2025**.

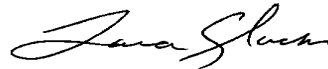
Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility 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 offline or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must 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.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: December 20, 2024



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