

## Union-University Conduct Rules and Recognition Election Agreement

This Agreement is made this 16 day of May, 2016, between CORNELL UNIVERSITY ("CORNELL") and the CORNELL GRADUATE STUDENTS UNITED/NEW YORK STATE UNITED TEACHERS, AMERICAN FEDERATION OF TEACHERS ("CGSU/NYSUT, AFT" or "Union").

**WHEREAS**, the Union seeks to represent a bargaining unit of Ithaca and Geneva campus-based Cornell graduate students enrolled in the Graduate School who hold titles under Cornell University Policy 1.3 as Teaching Assistants, Graduate Research Assistants, Graduate Assistants, Research Assistants (the "Graduate Assistants") excluding Fellows; and

**WHEREAS**, the National Labor Relations Board ("NLRB") is currently considering whether it will modify or overrule its decision in Brown University, 342 NLRB 483 (2004) ("Brown University"), holding that graduate student teaching and research assistants are not "employees" under the National Labor Relations Act ("NLRA"); and

**WHEREAS**, the parties agree, they wish to establish a fair and expeditious process to enable the Graduate Assistants to decide whether CGSU/NYSUT, AFT should be their exclusive collective bargaining representative; and

**WHEREAS**, the parties desire to maintain a mutually respectful relationship throughout this process;

1. **General Principles** The parties agree that they will treat each other with mutual respect and dignity throughout the process described in this Agreement.

Members of the Cornell community: students, faculty, and administration will

have the right to express their views concerning unionization of the Graduate Assistants consistent with University policies, the NLRA and this Agreement.

A. **Administration.** The parties agree that there should be guidelines regarding the Cornell administration's communication with Graduate Assistants regarding union representation. The administration may make one formal communication to Graduate Assistants regarding the University's position on unionization. "Formal communication" shall be defined as a written document setting forth the University's official position that is signed by the President or another senior University officer.

- i. The document shall be distributed via email to the Cornell campus (one time) and posted to a public CORNELL website(s).
- ii. The letter shall not exceed an approximate word count of 1,600 words. CORNELL shall notify the Union 5 business days in advance of distributing the document.
- iii. Prior to sending the document, CORNELL shall provide a draft version of the letter to the union for review and comment. CORNELL shall consider the union's comments (if any) in good faith, however, if there is a dispute regarding the language CORNELL shall be permitted to distribute the letter as it sees fit.

B. The parties acknowledge that in order to: (i) effectuate this Agreement; (ii) comply with the NLRA; and (iii) communicate the University's official position (collectively "the issues"), other senior university officials (or their successors or designees): Barbara Knuth, Joel Malina, Mary George Opperman, Mike Kotlikoff, Robert Harrison, James Mingle and Hunter

Rawlings, in addition to the Formal Communication shall be permitted to communicate about the issues either orally or in writing as long as such communication complies with the NLRA and this Agreement.

C. **Faculty and Administration:** The following policies will be enacted, consistent with NLRA principles and this Agreement. Except to the extent Paragraph B (above) applies, Administrators, Faculty, and Principal Investigators will be instructed not to:

- i. Coercively initiate conversations with Graduate Assistants regarding joining or supporting the Union, union representation or concerted activity. Notwithstanding the above, Administrators, Faculty or Principal Investigators shall be prohibited from threatening, promising a benefit or interrogating Graduate Assistants;
- ii. Engage in expression that would prevent graduate students' ability to freely associate with the Union, engage in protected concerted activity, obtain accurate information or freely choose union representation;
- iii. Hold department or lab meetings to advise graduate students on joining or supporting the Union, the benefits or disadvantages of union representation, or to discourage protected concerted activity;
- iv. Send letters or emails to individual graduate students advising them on joining or supporting the Union, the benefits or disadvantages of union representation, or to discourage protected concerted activity.

v. However, other than the specific guidelines listed above, nothing in this Agreement shall be interpreted as limiting academic freedom and/or preventing Faculty, Principal Investigators and Administration or otherwise exercising their free speech rights consistent with the NLRA.

## **2. Pre-election Procedures**

- A. Except as modified by this Agreement, both parties will have the same rights and obligations with respect to union organizing among the Graduate Assistants as if they were considered “employees” under the NLRA. In particular, Graduate Assistants will have the right to engage in concerted activities that would be protected under the NLRA. In addition to those rights, the Union will also be permitted to reserve space on campus for meetings, and will be permitted appropriate access to graduate student offices, lounges and other facilities and spaces that are typically occupied by graduate students.
- B. The Union will not file a representation petition with the NLRB at any time to seek an election or request recognition as representative of the Graduate Assistants. As specified below, unless and until the NLRB issues a ruling determining that graduate students serving as teaching and/or research assistants at private universities are “employees” eligible for union representation under the NLRA the Union shall not exercise its right to seek an election under this Agreement. If the pending cases: 02-RC-143009, *The New School* and 02-RC-143012, *The Trustees of Columbia*

*University in the City of New York* are both withdrawn before Board decisions issue, the Union will have the ability to file a representation petition with the NLRB and will not use the private recognition procedure outlined in Section 3 of this Agreement, unless otherwise agreed to by the parties in writing.

- C. CORNELL understands the Union's desire and need for certain information about graduate students and will comply to the extent permitted by law to provide the Union with a list of all graduate students who are in the proposed bargaining unit along with the following information, to the extent CORNELL has such information: department, degree program, date of first enrollment as a student and field of study. With respect to all information provided under this Agreement, the Union agrees not to use this information for any purpose other than internal Union administration and communication with these individuals. This information will be provided to the Union in Excel format no later than 15 calendar days from the latter of the following: (1) an arbitrator's subpoena being enforced by any court of competent jurisdiction located within the County of Tompkins, State of New York ordering the University to provide the above-described information to the Union; and (2) notice, which has been vetted and approved by the Union (such approval shall not be unreasonably withheld and will be expeditiously processed), being given to all affected students whose information will be released. The parties stipulate that the Union may seek

the arbitrator's subpoena for the above-described information any time after the execution of this Agreement.

(1) In the event the NLRB issues a ruling determining that graduate students serving as teaching and/or research assistants at private universities are "employees" eligible for union representation under the NLRA, then upon the Union's request, CORNELL will use best efforts to within the extent of the law gather, in addition to the list of graduate student information described in the paragraph above, the following information about the graduate students: job titles, personal mailing addresses, personal phone numbers, and personal email addresses. This information will be provided to the Union in Excel format no later than 15 calendar days from the latter of the following: (1) an arbitrator's subpoena being enforced by any court of competent jurisdiction located within the County of Tompkins, State of New York ordering the University to provide the above-described information to the Union; and (2) notice, which has been vetted and approved by the Union (such approval shall not be unreasonably withheld and will be expeditiously processed), being given to all affected students whose information will be released. The parties stipulate that the Union may seek the arbitrator's subpoena for the above-described information any time after the NLRB issues a ruling determining that graduate students

serving as teaching and/or research assistants at private universities are “employees” eligible for union representation under the NLRA.

### **3. Election Procedures**

A. **Election.** In the event the NLRB issues a ruling determining that graduate students serving as teaching and/or research assistants at private universities are “employees” eligible for union representation under the NLRA the question of whether a majority of Graduate Assistants in the unit set forth in Paragraph (C) below wish to be represented by the Union shall be determined in an election conducted by the American Arbitration Association (“AAA”). In order to trigger the election procedure, the Union shall make a showing to the AAA of valid, signed (paper or electronic (pursuant to the NLRB General Counsel’s guidance)) authorization cards from 30% of the bargaining unit as defined in this Agreement. CORNELL may require an Arbitrator to review the cards to ensure their validity. If a majority (50% +1) of the Graduate Assistants voting in an election conducted pursuant to the terms of this Agreement votes in favor of representation by the Union, CORNELL immediately shall grant recognition to the Union as the exclusive collective bargaining representative of the unit with all of the rights and obligations of a union certified by the NLRB to the extent consistent with this Agreement. The election will be conducted by manual ballot consistent with NLRB rules and regulations. A notice of CORNELL’s recognition of CGSU/NYSUT, AFT as the exclusive collective bargaining representative of Graduate Assistants will be sent to the NLRB.

**B. Eligible Voters.** Eligible voters will be all Ithaca and Geneva campus-based Cornell graduate students enrolled in the Graduate School who hold titles under Cornell University Policy 1.3 as described below in Paragraph (C) during the semester in which the election is held. The Parties agree to discuss in good faith in the Union-Management Committee, described in Section 4 of this Agreement, and potentially include in the voting unit Graduate Students who fall into a limited number of unique categories and who do not otherwise hold an assistantship appointment during the semester in which an election pursuant to this Agreement is held. At any time after the initiation of UMC discussions, upon request of either party, the parties may utilize the dispute resolution mechanisms of the Agreement to resolve any dispute over voter eligibility as described in the foregoing sentence.

**C. Scope of the Bargaining Unit.** All Ithaca and Geneva campus-based CORNELL graduate students enrolled in the Graduate School who hold titles under Cornell University Policy 1.3 as Teaching Assistants, Graduate Research Assistants, Graduate Assistants, and Research Assistants, and excluding Fellows.

**D. Timing of Election.** Upon request of the Union, an election shall be conducted by the AAA, provided that there will be a maximum of 15 business days between the date of the request (when properly supported by a sufficient showing of interest, as described in Paragraph A, above) and the election. However, the parties agree that notwithstanding the above, in



order to maximize voter turnout, no election will be scheduled during any official CORNELL break or finals period.

- E. **List of Eligible Voters.** The Union shall provide the University with 7 calendar days' notice of its intent to file an election petition. CORNELL will provide the Union with the voter eligibility list in Excel format after notice, which has been vetted and approved by the Union (such approval shall not be unreasonably withheld and will be expeditiously processed), has been given to all affected students whose information will be released and within 3 business days following an arbitrator's so-ordered subpoena compelling the University to provide the below-described information to the Union (to the extent Cornell has the information). The Voter Eligibility list will contain an updated list of all graduate students who are in the group described in Paragraph (C) above, with their personal mailing addresses, personal phone numbers, personal email addresses, department, job title, degree program, start date, and field of study. The parties stipulate that the Union may seek the arbitrator's so-ordered subpoena for the above-described information any time after the Union files its election petition consistent with this Agreement.
- F. **Disputes.** If there is any dispute regarding the eligibility of any individual voting in an election conducted pursuant to this Agreement, such dispute will be resolved by arbitrator Howard Edelman in accord with the terms of this Agreement. The arbitrator will take into consideration the standards applied by the NLRB under the NLRA to the extent consistent with this Agreement, with the understanding that the individuals holding the posi-

tions described in Paragraph (C) above are deemed eligible to vote. If any dispute arises as to the results of an election conducted pursuant to this Agreement, such dispute will be resolved by the arbitrator, based on the terms of this Agreement. The arbitrator will follow standards applied by the NLRB under the NLRA to the extent that those standards are otherwise consistent with this Agreement. Any hearing to resolve disputes under this Section shall be held within 10 calendar days of notice by one of the parties to the other, and will be limited to one day in duration, with the time evenly divided between the parties. A decision, order, and certification of election results shall issue within 14 calendar days of the hearing.

4. **Open Discussion and Access to Information.** The parties agree that, in the interest of having a well-informed electorate and to facilitate open dialogue;
- A. The parties will jointly release the letter attached to this Agreement as Appendix 1. The letter will be featured in the weekly Graduate School announcements email, distributed to graduate fields for posting and sent separately via email by the University to all graduate students at an agreed upon appropriate time.
  - B. The parties shall create a Union-Management Committee (UMC) consisting of a minimum of 3 regular members from each party to discuss any and all issues under, pursuant to, or related to in any way, this Agreement and to work on any other issues of mutual interest. Each party shall choose its committee members. The committee shall schedule a regular monthly meeting and may establish additional sessions if needed.

C. Union representatives will be permitted access to all areas of campus that are generally open to graduate students for the purposes of communicating with and meeting with graduate students and posting literature, provided that the Union does not interrupt the operations of CORNELL. The Union will provide the names of these Union representatives to CORNELL no later than 24 hours prior to their arrival on campus.

D. CORNELL will not restrict any of its students or employees from wearing shirts, buttons, and other items expressing their position regarding graduate student unionization consistent with the NLRA, CORNELL policies, and this Agreement. The Union agrees that none of its conduct and communications will violate its no strike pledge, *infra*, or deface, destroy or damage CORNELL or personal property.

5. **Bargaining Obligation.** If the Union is determined to be the exclusive representative of the Graduate Assistants as a result of the election procedures described above, CORNELL and the Union will commence negotiations in good faith over the terms of a collective bargaining agreement. The Union recognizes that the University's bargaining obligation is limited by statute to "wages, hours and terms and conditions of employment" of the Graduate Assistants. The Union recognizes that certain issues involving the academic mission of the University lie outside the scope of bargaining as defined by the NLRA. These issues may include, but are not necessarily limited to (1) conditions and requirements for the admission of students to graduate programs; (2) matters that pertain to the amount of any tuition, fees, awards or student benefits (provided that they are not terms and conditions of employment); (3) mat-

ters that pertain to the merits, necessity, or organization structure of any academic unit, department, field, program, or course established, eliminated or modified by the University; (4) decisions relating to student financial aid (provided that they are not terms and conditions of employment); (5) decisions relating to the number of assistantships and the criteria for the granting of appointments; (6) decisions on a student's academic standing or progress (including withdrawal for academic reasons); (7) matters that pertain to degree and certificate requirements; and (8) matters pertaining to course assignment, content, teaching methods and supervision of courses, curricula and research programs. Notwithstanding the above, the parties will bargain in good faith over the contents of a management rights clause for their collective bargaining agreement containing some or all of the above examples of management prerogatives that are outside the scope of bargaining. Finally, nothing in this section should be read as limiting the Union's ability to request bargaining over the effects of including such management prerogatives into the parties' collective bargaining agreement.

**6. Enforcement.** Neither party will initiate any proceeding with the NLRB (or in any other forum other than as specified by this Agreement), including without limitation, on any and all issues concerning the provisions of this Agreement, the decision by the Graduate Assistants whether to be represented by the Union, or the conduct of the parties in connection with the decision of the Graduate Assistants whether to be represented by the Union. Nothing in this Agreement shall prevent either party from the right to initiate proceedings with the NLRB to resolve issues that occur after the bargaining obligation attaches. As

specified below, mediation and arbitration are the sole and exclusive dispute resolution mechanisms for any dispute under, pursuant to, or related in any way to this Agreement.

**A. Mediation.** Before any dispute under, pursuant to, or related in any way to this Agreement is arbitrated, the parties shall mediate such dispute before Carol Wittenberg who will act as a neutral mediator. Gary Kendellen shall serve as the alternate mediator. The mediator will adhere to the Model Standards of Conduct for Mediators jointly issued by the AAA, American Bar Association, and Association for Conflict Resolution. Moreover, the parties agree that the cost of mediation shall be borne equally by the parties, except all parties' attorneys' fees.

**B. Arbitration.** If any dispute between the parties is not resolved through mediation, a hearing will be conducted before an Arbitrator within 48 hours of notice by the party alleging a violation to the other party and to the arbitrator. The parties agree to make themselves available during the evenings and on weekends in order to comply with this time limit. Any hearing conducted under this provision will be limited to four hours (except if both parties agree the matter requires more time or the arbitrator rules otherwise) with the time divided evenly between the two parties. The arbitrator will have the authority to issue any order deemed necessary to ensure compliance with this Agreement, including bench decisions, temporary restraining orders, or preliminary injunctions. If either party believes that a violation of this Agreement is egregious or repetitive that party can file directly for arbitration. Notwithstanding the above, the Arbi-

trator shall not have the authority to engage in interest arbitration related to the terms and conditions of this Agreement or any subsequent collective bargaining agreement. The Arbitrator shall follow, as applicable, the Labor Arbitration Rules of the AAA. Moreover, with respect to any Arbitration under this Agreement, all arbitration costs shall be shared equally between the parties, except all parties' attorneys' fees. The parties specifically empower the arbitrator to resolve disputes concerning CORNELL's obligation under this Agreement to provide information to the Union, including without limitation, making determinations related to conflict of laws including privacy laws such as FERPA.

**C. Panel of Arbitrators.** If Arbitrator Howard Edelman is unavailable to resolve issues pursuant to this Agreement, then Arbitrator John Sands shall serve and shall have full authority to resolve such issues. Additional arbitrators may be added upon mutual agreement of the parties.

**D. Orders and Decisions.** All orders and decisions issued by an arbitrator pursuant to this Agreement shall be final and binding on the parties. Upon application of a party to this Agreement, any court of competent jurisdiction located within the County of Tompkins, State of New York shall, in accordance with law, enforce an order of the arbitrator, including temporary restraining orders and preliminary injunctions. The parties hereby consent to the entry of an order of an arbitrator as the judgment or order of the court, without findings of fact or conclusions of law. In the event of an unsuccessful challenge to an arbitration award issued pursuant to this

Agreement, the party who challenged the award or who unsuccessfully objects to the entry of an award of the arbitrator as an order of the court shall pay the reasonable attorneys' fees and costs of the other party.

7. **Notice to Parties.** Any notice to be served on the Employer under this Agreement will be sent via U.S. Mail and email to Mary George Opperman (130 Day Hall, Ithaca, NY 14853; [mary.opperman@cornell.edu](mailto:mary.opperman@cornell.edu)) and James Mingle (330A CCC Building, Ithaca, NY 14853; [james.mingle@cornell.edu](mailto:james.mingle@cornell.edu)) with a copy to Paul Salvatore (11 Times Square, New York, NY 10036; [psalvatore@proskauer.com](mailto:psalvatore@proskauer.com)). Any notice to be served on the Union under this Agreement will be emailed or sent via U.S. Mail to Victoria Miller (NY-SUT/CGSU, 401 E. State St. Suite 402, Ithaca, New York 14850; [vmiller@aft.org](mailto:vmiller@aft.org)) and to a CGSU member as so designated and communicated to Cornell.

8. **Strike and Lockout.** The Union will not engage in an "Authorized Strike" (i.e., any strike, work stoppage, slowdown, sympathy strike, or other interference with the University's operations where the Union authorizes such action) while this Agreement is in effect. Additionally, CORNELL agrees to not lockout Graduate Assistants while this Agreement is in effect. Should an unauthorized strike occur, the parties may utilize the UMC to attempt to resolve the dispute.

A. Neither party shall be permitted to strike or lockout unless there is a good faith claim that the other party has committed an Egregious Breach of this Agreement. "Egregious Breach" shall be defined as a breach which is inherently destructive of the fundamental purposes of this Agreement and which either Party de-

termines in good faith cannot be reasonably remedied through the dispute resolution provisions described in Section 6 of this Agreement (e.g., a serious bargaining unit-wide violation of the NLRA, such as a unilateral and punitive change to the terms and conditions of employment of bargaining unit members). Cornell will only challenge under Section 6 the Union's determination of an "Egregious Breach" if it views the Union's position as frivolous or not in good faith. If there has been an Egregious Breach of the Agreement, and the other party wishes to engage in an authorized strike or lockout, it must first go through the mediation process explained in Section 6, Part A. There will be no more than three mediation sessions lasting a total combined maximum of 24 hours unless the parties agree otherwise. The mediation sessions must take place within 15 calendar days of filing for mediation.

B. If the dispute is not resolved in mediation, the parties must wait 15 calendar days after the final mediation session to engage in a strike or lockout.

C. After the waiting period ends, if either party commences an authorized strike or lockout, this Agreement will immediately terminate and shall have no further force or effect.

**9. Duration.** This Agreement shall remain in effect for a period of one year, or expire when the Union is recognized as the exclusive collective bargaining representative through the election process referenced in Section 3 of this Agreement. The parties may renew or terminate this Agreement by mutual agreement.

A. Notwithstanding any language in this Agreement, in the event of a decision by the NLRB or a court of highest competent jurisdiction finding that graduate teaching assistants and graduate research assistants are not employees under the NLRA, this Agreement will immediately



terminate and shall have no further force or effect. Moreover, the parties agree that any collective bargaining agreement reached between the parties will be honored for the duration of the Agreement.

**10. Ratification.** This Agreement shall not become effective unless and until it is both executed by authorized representatives of the parties and then ratified by both parties' respective ratification bodies.

For Cornell University

  
Mary George Opperman      5-17-16  
Date

For Cornell Graduate Students United/NYSUT, AFT

  
Victoria Miller      5/12/16  
Date

  
Rose Hennessy      5/12/16  
Date

  
Michaela Brangan      05.12.16  
Date

  
Katryn Eynson      5/12/16  
Date

  
Vijay Phulwani      5/12/16  
Date

  
Todd Dickey      5-13-16  
Date

## APPENDIX 1

NOTE: This is the jointly released letter referred to in the agreement, to be “published in the weekly Graduate School Announcements email, distributed to graduate fields for posting, and sent separately via email by the University to all graduate students at an agreed upon appropriate time.”

Dear Cornell Community:

Cornell Graduate Students United (CGSU) with its affiliates (NYSUT-AFT), and Cornell University write to announce to students, staff, and faculty that we have come to an agreement to guide a union campaign and election, should current federal labor law change to deem graduate students at private universities employees. [Insert: Reference to agreement on website] This joint communication serves to inform the Cornell community of what it should expect in the near future, and to outline resources for anyone who would like more information.

The National Labor Relations Board (NLRB), the federal agency responsible for governing relationships between private employers and unions, is currently considering cases involving Columbia University and the New School. At these universities, graduate teaching and research assistants and their unions are advocating for the Board to rule that graduate assistants at private universities have status as employees. An NLRB decision is expected before fall.

Should current federal law change, Cornell and CGSU are committed to ensuring that graduate assistants are able to make their own decisions about whether to join the union or not in a free and open environment, one that ensures dignity and respect for all parties involved. We believe this agreement provides a fair and expeditious process to determine whether a majority of graduate assistants wishes to unionize and select CGSU as its collective bargaining representative should federal labor law change. If an election is held, eligible voters will be all graduate students enrolled in the Graduate School in Ithaca and Geneva campus-based programs who hold titles under University Policy 1.3 (TAs, GRAs, RAs, and GAs). Should graduate students choose unionization, Cornell agrees to recognize that decision and will enter into good faith negotiations with the union to reach a collective bargaining agreement.

The campaign and election agreement includes guidelines for administrators, faculty, students, and CGSU to help maintain fairness throughout this process. It also creates election procedures, voter eligibility guidelines and dispute resolution processes. In addition, a Union-Management Committee (UMC), made up of representatives from both Cornell and CGSU, will be formed as a resource to answer inquiries from Cornell community members. It will provide a space for engaging in any necessary problem solving.

We encourage the Cornell community to watch for more information, and utilize all available educational resources.

Sincerely,