



## **SUPPLEMENTAL INFORMATION: Collective Bargaining**

Date: October 12, 2023

Posted to: <https://www.gs.emory.edu/funding/unionization.html>

Next week, Emory PhD students will decide whether they want to be represented by the Workers United Southern Regional Joint Board, Service Employees International Union as their sole and exclusive representative in collective bargaining with the University. This document is intended to provide PhD students with helpful information about collective bargaining and what it may mean for PhD students if they are represented by a union.

### **What is Collective Bargaining?**

Collective bargaining is the process by which a union and an employer negotiate the terms and conditions of employment, including pay, benefits, and working hours for all members of the bargaining unit, regardless of whether a particular individual votes in favor of unionization.

Collective bargaining agreements (CBAs) apply to all members of a unit equally. This means that individual supervisors, or supervising faculty, may be unable to make adjustments to work schedules defined in a CBA or provide additional assistance to Laney PhD students who are experiencing hardships, unless those exceptions are authorized under the CBA or agreed to by the union.

Collective bargaining is generally conducted in a series of meetings at which representatives of both the union and the employer exchange written proposals for a CBA. Federal labor law requires that parties to collective bargaining engage in good faith negotiations, meaning that the union and the employer meet, confer, and consider each other's proposals with a genuine desire to reach an agreement.

If Emory PhD students vote in favor of a union, representatives of both the University and the union would sit at the bargaining table and bargain for a first CBA. On the University's side, labor relations professionals, administrators, and faculty members would likely participate. On the union's side, the union would pick its own bargaining team, which might include PhD students in the bargaining unit and representatives from the union itself.

The negotiations for a first contract can take months and sometimes a year or more to complete. According to a Bloomberg Law analysis, it takes over 400 days for new unions and their employers to sign their first collective bargaining agreement. In many cases involving student unions at private universities, more than a year elapsed between a unionization vote and arrival at a ratified initial contract. Specifically, at Harvard University, this

process took almost two years and at Columbia, it took four years to reach an agreement for represented graduate assistants.

### **What will be the terms of a Collective Bargaining Agreement?**

At this stage, it is impossible to know what would be included in a CBA. The National Labor Relations Act (NLRA) requires employers and unions to bargain collectively with respect to “wages, hours, and other terms and conditions of employment.” From this statutory requirement, the National Labor Relations Board (NLRB) and Supreme Court have developed the distinction between *mandatory* bargaining subjects (i.e., wages, hours, and other terms and conditions of employment), and *permissive* subjects (i.e., subjects that are nonmandatory yet proper topics for bargaining in that addressing or resolving them in bargaining will not conflict with federal or applicable state law).

In its hallmark decision *Columbia University*, which deemed graduate students to be employees under the NLRA, the NLRB stated that “defining the precise contours of what is a mandatory subject of bargaining for student assistants is a task that the Board can and should address case by case.” Ultimately, the NLRB’s guidance in this area is extremely limited and remains to be fully developed. Because the NLRB and the federal courts have little experience in analyzing what are “terms and conditions of employment” for PhD students whose teaching and research are part of their graduate training, it is possible that disagreements over what is “bargainable” or not in the context of higher education will result in litigation.

With that ambiguity in mind, it is likely that mandatory bargaining subjects in the university setting would include compensation for teaching and research services, work hours, health insurance, teaching assistant and research appointments, disciplinary procedures, grievance and arbitration procedures, leaves of absence, vacation, health and safety, union access and rights, intellectual property rights, and workload.

Although many graduate student unions at other private universities have vowed to take on larger issues beyond their membership, including many social justice issues such as climate change, racial justice, student body diversity, tax reform and other matters, collective bargaining has not resulted in graduate student unions incorporating these topics within CBAs. Most graduate student union contracts do not contain provisions pertaining to green initiatives nor do they provide for the union’s input in management matters, such as the selection of a diverse faculty. For example, Harvard’s CBA specifically acknowledges that some social justice issues—such as mental health initiatives and racial justice issues—are “beyond” the authority of the committees established by the CBA.

Additionally, many graduate student contracts at private universities explicitly state the parties’ acknowledgement and agreement that questions of academic judgement and decision-making are within the university’s sole discretion and are not subject to bargaining. Thus, topics such as student admissions, academic standards, degree completion requirements, research methodology, curriculum and course content, instructional methods, grading policies and practices, and other academic policies, procedures, rules and regulations have not been subject to bargaining in other graduate student union contracts.

Moreover, there are no guarantees in collective bargaining. Under federal labor law, parties are not required to reach an agreement or agree to any specific contract proposal. The NLRA only requires the parties to bargain in good faith. As a result, there is no guarantee that Emory PhD students would receive terms and conditions that are better than what they currently have.

Although the union and the University have a legal duty to bargain in good faith, it is possible that the parties may reach an “impasse” or a point in collective bargaining where further negotiation would be fruitless as neither side will move from their respective positions. Determining when the parties have reached an impasse is

rarely clear cut and often leads to litigation. Yet, if an impasse is reached, the parties could resort to economic weapons, such as a strike, and lead to uncertainty for PhD students.

PhD students should refer to the list of commonly asked questions on the Laney Graduate School [website](#) for additional information about unionization and collective bargaining.