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Graduate Student Employee Unionization in the Second Gilded Age

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ABSTRACT

In debates on the future of work, a common theme has been how work became less secure through the denial of employee status. Though much of the attention has focused on other industries, precarity has also affected those working in higher education, including graduate student employees, contributing to what is now called the “gig academy.” While universities have reassigned teaching and research to graduate assistants, they have also refused to recognize them as employees. Nevertheless, unionization has grown considerably since 2012, most significantly at private institutions. Utilizing a unique dataset, this chapter demonstrates that between 2012 and 2019, graduate student employees voted overwhelmingly for representation. The chapter contextualizes this growth within the history of their unionization movement. We argue that legal rights have been a predominant factor, with graduate assistants confronting, and frequently overcoming, their misclassification. Those experiences provide lessons for workers in other industries facing similar obstacles.

INTRODUCTION

Changes in the organization of work have major ramifications for the approximately four million people working in American higher education (Ginder, Kelly-Reid, and Mann 2019: 4), a sector that is a central realm of social reproduction in the information economy. Conscious economic decisions by universities and colleges have led to certain workers being denied legal employee status and labor rights. Those decisions are not recent phenomena, but they are emblematic of today’s Second Gilded Age, and their cumulative effect is profound. The growth of low-wage

and precarious labor in higher education has prompted scholars to refer to the birth of a “gig academy” (Kezar, DePaola, and Scott 2019).

Among the changes in higher education has been the increased reliance on graduate student employees (GSEs) to perform academic work, with institutions refusing to recognize them as employees and opposing their right to unionize. The classification issue stems from GSEs playing a dual role at universities. On the one hand, they teach and conduct research for compensation. At the same time, they are doctoral students mentored and supervised by faculty. While their financial situation is often insecure, many of them come to this dual role with high social capital as children of parents with advanced degrees (Mullen, Goyette, and Soares 2003; Posselt and Grodsky 2017).

This chapter analyzes data demonstrating remarkable GSE unionization growth since 2012, when union density was last examined (Berry and Savarese 2012). The data include election results, final outcomes, voting determinants, and national union affiliations during the period. We apply a sectoral approach—separating public and private institutions—to our analysis because, until the period under study, GSE representation was almost exclusively at public universities.

The recent growth is contextualized within the half-century history of campus organizing. We demonstrate that economic, structural, and social issues have been central factors driving patterns of unionization. A fourth factor, labor rights, has been a predominant obstacle facing GSE unionization. We describe GSE strategies and tactics to challenge their misclassification and demonstrate how organizing and positive legal changes are intertwined. The chapter shows that militant and sustained organizing led to positive legal changes, with even unsuccessful efforts inspiring sustained cultures of resistance (Hatton 2020:141). GSE successes in challenging misclassification and attaining representation provide important lessons for workers in other industries seeking to challenge misclassification. The chapter concludes with a discussion of the road ahead, including the likelihood of additional growth in GSE union density following the withdrawal of a proposed administrative rule aimed at denying employee status to student workers.

A BRIEF HISTORY OF GSE UNIONIZATION

The earliest GSE unionization efforts coincided with renewed faculty demands for collective bargaining following a hiatus resulting from Cold War domestic repression (Herbert 2017). The causal factors underlying GSE unionization are like those attributed to faculty unionization: economic, structural, legal, and the impact of social movements (Ladd and Lipset 1973: 4). Those who are younger, ideologically motivated, nontenured, marginalized, and without a sense of a future in academia are more likely to support collective action on campus (Ladd and Lipset 1973: 25–26).

The original GSE organizing campaigns at the University of California at Berkeley and the University of Wisconsin at Madison faced a fundamental structural constraint: the lack of collective labor rights. At Berkeley, the American Federation of Teachers (AFT)-chartered union organized around working conditions and larger social issues. The union was never formally recognized, and it eventually disbanded (Cain 2018: 58–59). In 1969, the Teaching Assistants' Association (TAA) at Madison became the first voluntarily recognized union, leading to an historic 1970 contract. Like its predecessor at Berkeley, the TAA raised and fought for issues beyond GSE working conditions (Christenson 1971; Feinsinger and Roe 1971).

From the beginning, GSE organizing has challenged shifts in higher education that increasingly assign teaching and research responsibilities to low-paid graduate assistants, postdoctoral employees, and contingent faculty, while future prospects for secure academic employment have diminished (Johnson and Entin 2000; Julius and Gumport 2003; Kezar, DePaola, and Scott 2019). The primary drivers of GSE unionization are wages, health benefits, and other working conditions (Cain 2017: 125–126). Another goal has been to alter the hierarchical power dynamics within academic labor, thereby decreasing the potential for abuses (Hatton 2020: 198–200).

The shift in institutional employment practices has been characterized as corporatization with graduate assistants exploited as “cheap labor” (Hatton 2020:42; Julius and Gumport 2003; Lafer 2003; Rhoads and Rhoades 2005). In the ten-year period from 2005 to 2015, GSE employment growth was triple the rate of growth of tenure-track faculty (Kezar, DePaola, and Scott 2019: 60). By 2017, graduate assistants and contingent faculty made up 73.2% of the entire academic workforce, yet GSE compensation had fallen below the average cost of living in most major

cities (Kroeger, McNicholas, von Wiplert, and Wolfe 2018; McNicholas, Poydock, and Wolfe 2019: 9).

GSE unionization has often been imbued with militant resistance and social movement unionism (Kitchen 2014). Strikes reflect that militancy, with GSE strikes making up 17% of all higher education strikes between 2012 and 2018 (Herbert and Apkarian 2019). The collective resistance has helped maintain organizing campaigns despite the relatively short-term nature of employment and the regular turnover of bargaining unit members (Kitchen 2014). This provides an important organizing lesson for current campaigns among precarious workers in other industries (Covert 2020).

Major surges in GSE union activity have often coincided with other social movements taking place on and off campus. The campaigns at Berkeley and Madison emerged from the free speech and anti-Vietnam War movements, respectively. At the University of Missouri, a GSE union formed to oppose proposed health insurance cuts, to improve compensation, and to support the Black Lives Matter movement (Eligon and Pérez-Peña 2015; Korn, Peters, and Belkin 2015). Other recent campaigns have aligned with the Occupy Wall Street, the Fight for \$15, and the #MeToo movements and have been inspired by labor organizing on other campuses (Buchanan, Misse, and Weatherford 2016; Crow and Greene 2019: 193, 203; Douglas-Gabriel 2018; Kezar, DePaola, and Scott 2019: 133–135; McCarthy 2012).

Support from national unions has also been critical in campus organizing by providing essential resources and labor allies (Dixon, Tope, and Van Dyke 2008). Nevertheless, while faculty, labor, and community support have played important roles in GSE campaigns, this support has not always guaranteed success (Dixon, Tope, and Van Dyke 2008; Julius and Gumport 2003).

Campaigns have frequently occurred at elite universities, where there are long histories of student protest (Dixon, Tope, and Van Dyke 2008: 389). At the same time, some faculty, including self-described progressives, have joined administrators to oppose GSE unionization because it challenges their privileges, prerogatives, and authority (Harvey 2006: 141–142; Robin and Stephens 1996: 46–47).

What is unique is that GSE campaigns have often received extensive support from unions known for private sector representation rather than from traditional educational organizations (Julius and

Gumport 2003; Kezar, DePaola and Scott 2019: 131–132). For example, Columbia University’s staff union provided crucial assistance in the rebirth of the GSE union on that campus (Crow and Greene 2019: 200).

Of all the factors concerning GSE unionization, however, labor law has been predominant, playing two critical but contradictory roles. It has been a notorious obstacle, particularly at private universities and at public institutions in states without collective bargaining laws (Dixon, Tope, and Van Dyke 2008). Once labor rights have been recognized, however, the law sets the framework for unionization growth and negotiations (Herbert and van der Naald 2020; Julius and Gumport 2003). The importance of legal rights is consistent with early findings about the key role legal changes played in the rise of faculty unionization at public institutions (Garbarino 1975: 62–64; Ladd and Lipset 1973: 5).

UNION CERTIFICATION OR VOLUNTARY RECOGNITION

Over its history, the GSE union movement has employed two procedural means for overcoming misclassification and attaining unionization: certification by a labor relations agency or voluntary recognition by the university.

Certification is the most secure method. If an employer does not object to a representation petition or its objections are resolved, a union can be certified relatively quickly after an election or a card check in states that allow it (Herbert 2011). However, certification can be delayed or forestalled when an institution chooses to litigate GSE employee status or bargaining unit composition issues.

To avoid the costs of litigation, voluntary recognition agreements are reached that can lead to representation. By agreement, the parties can decide that an election or card check will be administered by a third party, mandate employer neutrality, set rules regarding union access, and define the scope of negotiations following recognition (Eagen 2016; Herzfeld 2016; New York University–GSOC/UAW 2013).

The decision to enter into an agreement can reflect an institution’s respect for the right of campus workers to self-organization (Herbert 2017: 3). For example, the University of Michigan has a formal voluntary recognition and neutrality policy that accepts the fundamental right of

collective representation (University of Michigan Board of Regents 2020). Frequently, sustained organizing campaigns supported by politicians, community members, and alumni are necessary to persuade recalcitrant universities to reach a voluntary recognition agreement.

At the University of Connecticut, elected officials played an instrumental role in persuading the university to enter into an agreement (Eagen 2016; Herzfeld 2016). United Auto Workers (UAW) representative Ken Lang described the campaign as “an organizer’s dream” (Herzfeld 2016: 2), with voluntary recognition being granted only a few months after organizers started collecting union cards. Similar agreements have been reached at New York University (NYU), Cornell, Georgetown, and Brown (Table 1). A major limitation of this procedure is that a university has the prerogative to withdraw recognition following the expiration of a contract, which happened at Madison in 1980 (Craig 1987) and NYU in 2005 (Herbert and van der Naald 2020).

Labor’s pursuit of certification or voluntary recognition has been in response to differences in legal precedent in the private and public sectors, as well as existing political and organizing environments. We, therefore, present below the distinct histories of GSE unionization in the private and public sectors before turning to developments since 2012.

IN THE FACE OF OBSTACLES: GSE UNIONIZATION PRIOR TO 2012

Private Sector Law and GSE Unionization Prior to 2012

National Labor Relations Board (NLRB) precedent has been a perennial obstacle to GSE unionization on private university campuses. In the two periods when that barrier was toppled, a flood of formal unionization efforts followed, strongly supported by national unions.

The NLRB began classifying graduate assistants as primarily students in the early 1970s (*Adelphi University* 1972). In 1974, the NLRB ruled that Stanford University physics department research assistants did not have the right to unionize because they were primarily doctoral students and not employees (*Leland Stanford Junior University* 1974). For the next two decades, federal precedent remained unchanged, treating paid GSE labor as not subject to the National Labor Relations Act (NLRA). Despite that barrier, organizing efforts continued, primarily at private institutions including Yale, Brown, Columbia, and Brandeis (Dixon, Tope, and Van Dyke 2008). Perhaps the most well-remembered campaign took place at Yale, where organizing began

in 1989 (Hayden 2001). Early strikes at Yale led to increased GSE compensation and training (Dixon, Tope, and Van Dyke 2008). In 1995, approximately 250 Yale teaching assistants participated in a grade strike in an unsuccessful effort to compel voluntary recognition (Robin and Stephens 1996).

At the turn of the 21st century, the legal landscape began to change (Herbert and van der Naald 2020). In 2000, an NLRB Board majority of Clinton-appointed members ruled that NYU graduate assistants had the right to organize (*New York University* 2000). The reversal led to the first contract at a private university (Herbert and van der Naald 2020). The legal change was a catalyst for the filing of representation petitions at Brown, Cornell, Pratt, Tufts, Columbia, and Yale (Pollack and Johns 2015; *Pratt Institute* 2003). An election at Yale resulted in a GSE vote against representation (Dixon, Tope, and Van Dyke 2008: 377). At Cornell, graduate assistants voted to reject unionization by a 2–1 margin (Dullea 2003).

A subsequent certification election was held at Brown, but the ballots were impounded after the university again challenged GSE employee classification (*Brown University* 2004). Other pending petitions and elections met similar procedural fates (Pollack and Johns 2015; *Pratt Institute* 2003).

Following the election of President George W. Bush, a change in NLRB Board composition led to the overturning of the *New York University* decision and a return to classifying graduate assistants as primarily students (*Brown University* 2004). Following the decision, NYU refused to negotiate a new agreement after the first contract expired (Herbert and van der Naald 2020). The restored legal obstacle led to a decline in formal representation efforts (Dixon, Tope, and Van Dyke 2008: 378). Between January 1, 2006, and December 31, 2013, there were only two GSE representation petitions filed with the NLRB. During the same period, over two dozen petitions were filed to represent contingent faculty, resulting in new bargaining units at private universities including American, Georgetown, and Tufts (NLRB FOIA LR-2017-0964 and 2020-0423).

Public Sector Law and GSE Unionization Prior to 2012

Since 1969, administrative agencies and courts in various states have recognized GSE rights to unionize and engage in collective bargaining or have certified a union to represent them (Herbert

and van der Naald 2020). This precedent did not come easy and often required lengthy campaigns, lobbying, and litigation. For example, State University of New York (SUNY) graduate assistants organized for over two decades before a union was certified to represent them (Barba 1994). It took years of litigation before SUNY's legal challenge to GSE employee status was finally rejected [*State of New York (State University of New York)* 1991].

Early determinations in some states, such as Oregon and California, denying GSE bargaining rights were later reversed (*Oregon University System* 2013; *Regents of the University of California* 1989, 1998; *University of Oregon* 1977). Laws in some states, such as Minnesota, Illinois, and Washington, were amended to explicitly grant collective bargaining rights, while laws in a few other states continue to exclude them. In Missouri and Florida, appellate courts have ruled that graduate assistants have a state constitutional right to union representation (Herbert and van der Naald 2020).

SIGNIFICANT GROWTH IN UNION REPRESENTATION 2012–2019

From 2012 to 2019, there were 39 formal representation efforts—27 at private universities, including 10 at Yale, and 12 at public institutions. These figures do not include campaigns that did not lead to a representation petition or a voluntary recognition agreement. Our analysis draws on a unique data set of formal representation matters involving academic labor, including faculty and graduate assistants, over the past eight years (see Herbert, Apkarian, and van der Naald 2020) The data were gathered from representation petitions, voluntary recognition agreements, ballot tallies, certifications, administrative and court decisions, and other available documents.¹

Private Sector Formal Representation Efforts: 2012–2019

Since 2012, the greatest number of formal representation efforts was at private universities. Many were on the same campuses where graduate assistants began organizing in the 1990s and 2000s (Dixon, Tope, and Van Dyke 2008). The first successful private sector effort occurred at NYU. Following a multi-year union campaign, the UAW and NYU entered into a voluntary recognition agreement in 2013 for a non-NLRB election (New York University–GSOC/UAW 2013). This agreement was reached only after the UAW dropped pending NLRB representation petitions (*New York University* 2010; *Polytechnic Institute of New York University* 2011). It defined the bargaining unit to exclude research assistants in science and mathematics

departments, and it committed NYU to remain neutral prior to the election (New York University–GSOC/UAW 2013). After an overwhelming vote in favor of representation, NYU voluntarily recognized the UAW, and they negotiated a new contract (Herbert and van der Naald 2020).

In 2014, the UAW filed petitions on behalf of graduate and undergraduate assistants at Columbia and at the New School seeking to overturn the *Brown University* decision. While those cases were pending, Cornell and an AFT-affiliated union reached a voluntary recognition agreement (Cornell University–CGSU–NYSUT/AFT 2016). The agreement created guidelines restricting administrative communications about unionization but, unlike the NYU–UAW agreement, did not mandate university neutrality.

A new NLRB Board majority, appointed by President Obama, issued a decision in 2016 reversing the *Brown* decision, thereby restoring GSE employee status (*Columbia University* 2016). The *Columbia University* decision ushered in another historic chapter in student worker unionization. The decision was applied to the New School organizing effort (*The New School* 2017), and it triggered a non-NLRB election at Cornell. Subsequent NLRB representation elections at Columbia and the New School resulted in the UAW being certified to represent combined units of graduate and undergraduate assistants. Only after a seven-day strike at Columbia did the institution finally agree to negotiate; however, the agreement also included a no-strike pledge (Columbia University–GWOC/UAW 2018).

Over the next two years, GSE representation petitions were filed at 11 other private universities including American, Brandeis, Harvard, Tufts, and Yale (Table 1). Unlike earlier periods, the concerted power of organizing drives led some private institutions to agree to the scheduling of representation elections without legal objections. At Brown and Georgetown, the AFT negotiated agreements that led to voluntary recognition after non-NLRB elections. Other major universities continued to resist by trying to overturn the *Columbia University* decision and litigate other issues. Yale challenged the effort by UNITE HERE to represent departmental bargaining units rather than a university-wide unit.

Despite university legal challenges, the NLRB held elections, resulting in the certification of unions at Boston College, Loyola University Chicago, University of Chicago, and Yale. At

Duke University and Washington University, the graduate assistants voted against representation, leading to the withdrawal of those petitions.

Following the 2016 presidential election, the majority composition of the NLRB Board changed again, leading unions to re-examine their organizing strategies. The filing of new NLRB petitions slowed, and unions began withdrawing representation petitions at institutions actively relitigating the GSE employee status issue. While the unions did not articulate a reason for the withdrawals, media reports indicated that the withdrawals were due to growing concerns that the new NLRB majority would use one of the pending cases to overturn the *Columbia University* decision (Flaherty 2018). This strategic labor retreat underscores again the centrality of labor law and politics as factors in GSE unionization.

Consistent with labor's fears, the new NLRB Board majority in 2019 took regulatory action to reverse *Columbia University*. Rather than wait for a litigated case, the agency announced a proposed rule to exclude all student employees in higher education from federal labor law protections (Herbert and van der Naald 2020). The proposed rule, however, was withdrawn in March 2021 following the appointment of NLRB Chairman Lauren McFerran and the termination of NLRB General Counsel Peter Robb by President Biden (National Labor Relations Board, 2021).

TABLE 1
Formal GSE Representation Efforts, 2012–2019

| Year | Institution (Department) | Sector | Affiliate | Vote Count | Unit Size | Outcome | Pre-Election Agreement | Existing Non-Tenure Track Faculty Union |
|------|--|---------|--------------|------------|-----------|--|---------------------------|--|
| 2012 | University of Minnesota | Public | UAW | 1142–1857 | 4395 | Dismissal After Election | No | Yes |
| 2012 | Montana State University | Public | AFT–NEA | 195–67 | 587 | Recognition After Election | No | Yes |
| 2013 | Oregon State University | Public | AFT | 287–32 | 1505 | Unit Clarification Added 767 to Existing GSE Unit | No | No |
| 2013 | New York University | Private | UAW | 630–10 | 1257 | Recognition After AAA Election | Yes | Yes |
| 2014 | University of Connecticut | Public | UAW | | 2165 | Recognition After Card Check | Yes | Yes |
| 2014 | University of Michigan– Ann Arbor | Public | AFT | | 2128 | Jurisdictional Dismissal | No | Yes |
| 2016 | Portland State University | Public | AAUP– AFT | | 793 | Certification After Card Check | No | Yes |
| 2016 | Yale University (Comparative Literature) | Private | UNITE HERE | | 22 | Withdrawal Before Election | No | No |
| 2017 | Loyola University Chicago | Private | SEIU | 71–49 | 210 | Certification After Election | No | Yes |
| 2017 | Yale University (Physics) | Private | UNITE HERE | 26–30 | 63 | Dismissal After Adverse Election | No | No |
| 2017 | Duke University | Private | SEIU | 398–691 | 2298 | Withdrawal After Adverse Election | No | Yes |
| 2017 | American University | Private | SEIU | 212–40 | 761 | Certification After Election | No | Yes |

| | | | | | | | | |
|------|--|---------|------------|----------|------|---|----|-----|
| 2017 | Brandeis University | Private | SEIU | 88–34 | 219 | Certification After Election | No | Yes |
| 2017 | Tufts University | Private | SEIU | 129–84 | 281 | Certification After Election | No | Yes |
| 2017 | The New School | Private | UAW | 502–2 | 1052 | Certification After Election | No | Yes |
| 2017 | Washington University | Private | SEIU | 174–216 | 494 | Withdrawal After Adverse Election | No | Yes |
| 2017 | Columbia University | Private | UAW | 1602–623 | 4256 | Certification After Election | No | No |
| 2018 | Boston College | Private | UAW | 270–224 | 778 | Withdrawal After Election and Certification | No | No |
| 2018 | Yale University (East Asian Languages) | Private | UNITE HERE | 5–1 | 27 | Withdrawal After Election and Certification | No | No |
| 2018 | Yale University (English) | Private | UNITE HERE | 22–4 | 35 | Withdrawal After Election and Certification | No | No |
| 2018 | Yale University (History of Art) | Private | UNITE HERE | 17–2 | 22 | Withdrawal After Election and Certification | No | No |
| 2018 | Yale University (Mathematics) | Private | UNITE HERE | 8–3 | 12 | Withdrawal After Election and Certification | No | No |
| 2018 | Yale University (Geology and Geophysics) | Private | UNITE HERE | 9–7 | 16 | Withdrawal After Election and Certification | No | No |
| 2018 | Yale University (Political Science) | Private | UNITE HERE | 19–14 | 72 | Withdrawal After Election and Certification | No | No |
| 2018 | Yale University (Sociology) | Private | UNITE HERE | 12–3 | 19 | Withdrawal After Election and Certification | No | No |
| 2018 | Yale University (History) | Private | UNITE HERE | 39–7 | 56 | Withdrawal After Election and Certification | No | No |
| 2018 | University of Chicago | Private | AAUP–AFT | 1103–479 | 2457 | Withdrawal After Election and Certification | No | Yes |

| | | | | | | | | |
|------|---|---------|--------|-----------|------|----------------------------------|-----|-----|
| 2018 | University of Pennsylvania | Private | AFT | | 2300 | Withdrawal Before Election | No | No |
| 2018 | Harvard University+ | Private | UAW | 1931–1523 | 5050 | Certification After Election | Yes | No |
| 2018 | Pennsylvania State University | Public | NEA | 950–1438 | 3799 | Dismissal After Adverse Election | No | No |
| 2018 | Cornell University | Private | AFT | 856–919 | 2500 | Dismissal After AAA Election | Yes | Yes |
| 2018 | University of Chicago* | Private | IBT | 67–13 | 199 | Certification After Election | No | Yes |
| 2018 | Illinois State University | Public | SEIU | 160–36 | 475 | Certification After Election | No | Yes |
| 2018 | Georgetown University | Private | AFT | 555–108 | 1059 | Recognition After AAA Election | Yes | Yes |
| 2018 | Brown University | Private | AFT | 576–394 | 1258 | Recognition After AAA Election | Yes | No |
| 2019 | Oregon Health and Sciences University | Public | AFSCME | | 251 | Certification After Card Check | No | No |
| 2019 | Southern Illinois University–Edwardsville | Public | SEIU | | 341 | Certification After Card Check | No | Yes |
| 2019 | University of Pittsburgh | Public | USW | 675-712 | 2534 | New Election Ordered | No | No |
| 2019 | University of Missouri | Public | NEA | | 2600 | Pending Election or Card Check | | |

Note: Year represents the year of union certification, union recognition, or the withdrawal of a representation petition following an election or certification.

+In the first election in December 2016 at Harvard University, GSEs voted against UAW representation. After the election was set aside by an NLRB Regional Director, the unit voted in favor of representation.

*This University of Chicago unit includes graduate and undergraduate students working in the libraries.

Public Sector Formal Representation Efforts: 2012–2019

Since 2012, growth of new bargaining units in the public sector has continued but at a slower rate than before. Representation petitions and one voluntary recognition agreement led to six new GSE bargaining units at public institutions, along with the expansion of a unit at Oregon State University. The majority (four) of the new bargaining units resulted from card checks rather than elections.

Union representation was rejected at the University of Minnesota and the Pennsylvania State University, despite decades of organizing and a clear legal right to collectively bargain (Ross 2012; Schackner 2001, 2018). Representation efforts at the University of Missouri and the University of Pittsburgh remain unresolved, and at the University of Michigan–Ann Arbor, a representation petition was dismissed on jurisdictional grounds.

AN ANALYSIS OF THE DATA: 2012–2019

This section begins with an analysis of 31 private and public sector representation election results in the period 2012–2019 that includes those situations where petitions were later dismissed or withdrawn. We then examine the total growth in unionization, including sectoral differences, a comparison with earlier periodic upsurges, and the correlation between the *Columbia University* decision and successful private sector unionization.

Election Ballot Results

The election ballot tallies in 2012–2019 demonstrate a strong preference for union representation. In 84% of the 25 private sector certification elections, a majority voted in favor of unionization. Favorable election results in ten of those efforts did not result in final positive outcomes because the petitions were later withdrawn for strategic reasons (Table 1). In the public sector, six elections were held. Three elections resulted in favorable ballot results. A majority in two elections voted against representation, and the election in a sixth was overturned as the result of union objections. In addition, unions were certified or recognized on three other campuses following card checks that demonstrated majority support for representation in those bargaining units (Table 1).

When graduate assistants voted in favor of representation, it was on average by wide margins: nearly three to one in the private sector and more than four to one in the public sector. Further, in elections where the majority voted against representation, the ballot counts were closer (43.2% to 56.8%). Similar wide margins are visible when we compare voting patterns across procedural type. In non-NLRB elections where the majority voted in favor of unionization, the average margins in favor to those against was greater than in agency-conducted elections (Table 2). Greater success in negotiated third-party elections is unsurprising because the parties' agreements limited the ability of universities to influence voters on the question of representation.

TABLE 2
Voting Patterns by Procedures and Sector, 2012–2019

| | Majority Voted in Favor | | Majority Voted Against | |
|----------------|-------------------------|--|------------------------|--|
| Private Sector | 84% (21) | | 16% (4) | |
| Public Sector | 50% (3) | | 50% (3)* | |

| | Majority Vote in Favor | | Majority Vote Against | |
|-----------------|------------------------------|-----------------------------|------------------------------|-----------------------------|
| | Proportion of Votes in Favor | Proportion of Votes Against | Proportion of Votes in Favor | Proportion of Votes Against |
| Total | 75.3% | 24.7% | 43.2% | 56.8% |
| Private | 74.4% | 25.6% | 44% | 56% |
| Public | 82% | 18% | 42.2% | 57.8% |
| Agency Election | 74.6% | 25.4% | 42.4% | 57.6% |
| AAA Election | 80.5% | 19.5% | 48.2% | 51.8% |

Note: Proportion of votes calculated as the average of all ratios of votes in favor to votes against (or vice versa) for each election effort. These proportions include 25 election efforts by units at private sector institutions and six by units at public sector institutions. Twenty-one agency elections and three AAA were conducted where the majority voted in favor. Six agency elections and one AAA were conducted where the majority voted against.

*Included is the election at the University of Pittsburgh, but the results were set aside by the Pennsylvania Labor Relations Board.

Despite an overall preference for representation, the period from 2012 also witnessed rejection of union representation in elections at five large research institutions and one university department. Unionization was rejected at the University of Minnesota, with approximately 62% voting against representation, the fourth rejection at that university over the decades (Ross 2012). At Penn State, the ballot tally showed that 60% rejected representation. In the private sector, Cornell graduate assistants voted against representation in an election conducted under a voluntary recognition agreement. At Duke, 63.5% voted against unionization, while at Washington University, 55.4% voted to reject representation. There was also a negative election result in one of nine Yale departmental elections.

Determinants in Election Results

Scholars have identified social pressure favoring unionization, dissatisfaction with working conditions, and perspectives on organized labor as primary variables impacting voter behavior in representation elections (Cain 2017; Davy and Shipper 1993). Related to those variables are two other factors: employer anti-union campaigns and union organizing strategies and tactics (Bronfenbrenner 1997, 2009; Lafer 2003).

The lopsided election results in favor of representation during the period under study, along with the history of the GSE labor movement, strongly suggest that voter support was affected by job dissatisfaction, an understanding that union representation would improve their status and workplace conditions, and that a favorable vote would be a statement of resistance and solidarity. The neutral stance taken by some campus administrators on the question of GSE representation might also explain the strong votes in favor. Owing to the nature of our data set, however, correlating those variables with each election outcome would be speculative because we lack sufficient campus-specific information. Voter survey results and interviews with graduate assistants, union organizers, faculty, and administrators are necessary to reach fully informed conclusions.

Employer Anti-Union Conduct

The purpose of anti-union campaigns is to counteract union support and challenge the value of union instrumentality. One common tactic is to portray a GSE union as a “third party” and describe collective bargaining as not in the best interests of the university or the graduate assistants (Dullea 2003).

Despite fierce legal resistance by many institutions against unionization and application of other union avoidance strategies in 2012–2019, a substantial percentage of the election results were pro labor. Those results include elections held at institutions that took a more neutral approach to the question of representation. Both findings are somewhat surprising because increased employer opposition has been central to the general decline in union success (Bronfenbrenner 2009).

This does not mean, of course, that union avoidance strategies have not impacted voter behavior. The vote against representation at the University of Pittsburgh was set aside because of employer misconduct (*Employes of University of Pittsburgh* 2019). In contrast, neutral decision makers found insufficient evidence of misconduct to order new elections at the University of Minnesota and at Cornell (*University of Minnesota, Unit 10* 2012; *Cornell University and Cornell University Students United* 2018). Those findings underscore the weak legal regulations over employer efforts to influence GSE vote outcome.

There is also evidence that administrators at institutions tried to instill fear among international students about their immigration status (Bittle 2017; Reyes 2018; Schackner 2018). While that conduct might have led to negative election outcomes at Penn State and Washington University, Columbia graduate assistants voted overwhelmingly in favor union representation despite the targeting of international students.

Bargaining Unit Size

Prior scholarship has established that bargaining unit size plays a key role in certification election outcomes, with workers in smaller units more likely to vote in favor of unionization (Farber 2001; Heneman and Sandver 1983). The data from the 2012–2019 GSE elections lend support to those findings. Nearly 90% of bargaining units with fewer than 1,000 voted in favor of representation. Among units with a size larger than 1,000, however, approximately 58% voted to unionize.

Departmental Differences

Another potential electoral determinant is the relative level of support for unionization by academic department. It has been argued that union support differs between teaching assistants in the humanities and social sciences, and research assistants in the sciences (Dixon, Tope, and Van

Dyke 2008: 379; Lafer 2003). While all share common experiences and similar aspirations, stratifications across departments have the potential to yield different levels of support. Research assistants are paid more on average than teaching assistants, but they face more abusive and coercive working conditions (Hatton 2020: 6–7; National Education Association 2019: 11).

The expectation of weaker support among research assistants might explain why some campaigns have focused on organizing teaching assistants only (Dixon, Tope, and Van Dyke 2008: 379). At NYU, science and mathematics research assistants were excluded by agreement from the bargaining unit (New York University–GSOC/UAW 2013). Research assistants at the University of Iowa were also excluded through a stipulation (*University of Iowa/State Board of Regents* 1994).

The UNITE HERE strategy of seeking to represent graduate assistants at Yale on a departmental basis provides rare but limited data to test the disciplinary divide argument concerning support for unionization. While the data address election results by department, they do not identify the respective percentages of teaching and graduate assistants in each department.

The Yale ballot tallies listed in Table 1 reveal that the highest level of support for unionization was in the humanities and social sciences. At the same time, there was greater support in mathematics than in political science and a clear split in the physical sciences, with geology and geophysics supporting unionization and physics voting against representation (Herbert and Apkarian 2017: 33). These electoral results suggest that while academic discipline can impact voter behavior, it is not a determinative factor in ballot outcomes.

Contingent Faculty Bargaining and Organizing

It is common for scholars to link graduate assistants and contingent faculty when discussing low-wage precarious academic work (Kezar, DePaola, and Scott 2019). At institutions that rely extensively on contingent faculty, graduate assistants are more likely to seek union representation (Dixon, Tope, and Van Dyke 2008: 389).

Despite substantial growth in contingent faculty unionization since 2012 (Herbert, Apkarian, and van der Naald 2020), GSE votes in favor of representation do not appear to have been affected by the existence of a contingent faculty bargaining unit. In elections where GSEs voted in an election to unionize, just 45.8% of the cases had an existing contingent faculty bargaining unit.

When GSE units voted against unionization, 57.1% of the institutions had a contingent faculty unit.

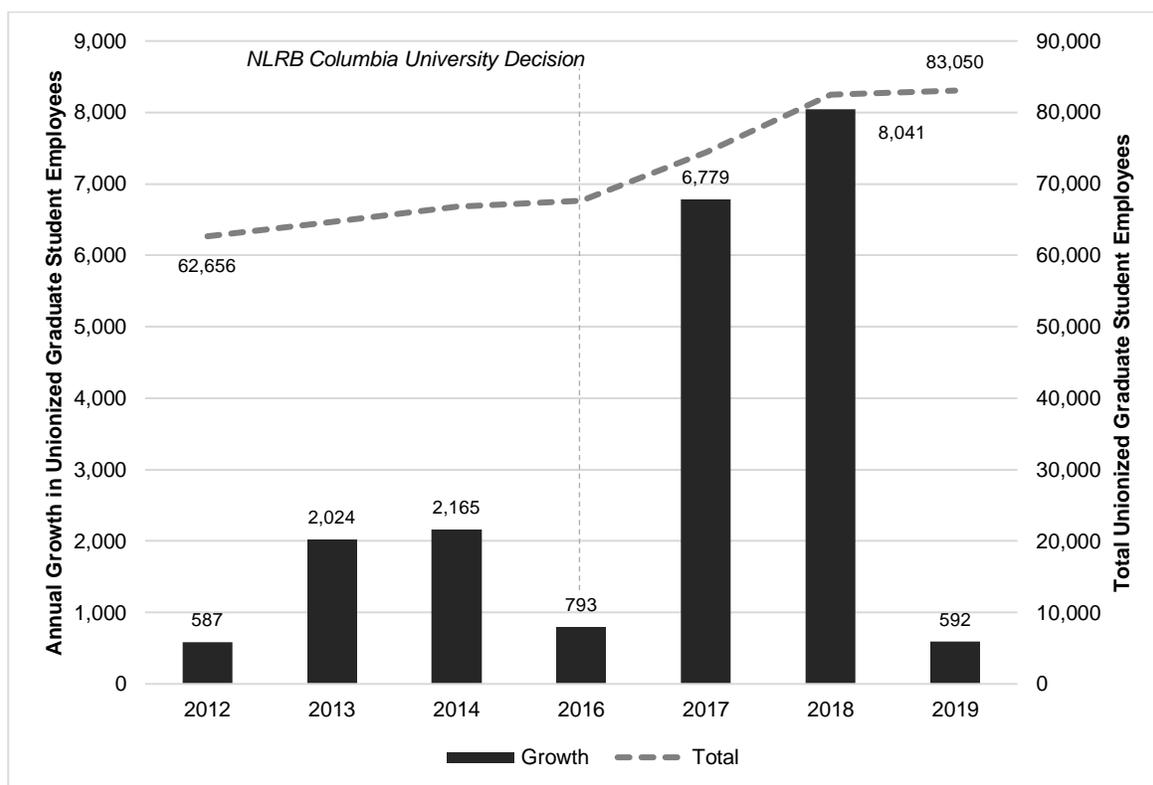
On the basis of their similar working conditions, it would be reasonable to anticipate that graduate assistants and contingent faculty would seek to unionize and negotiate together in one bargaining unit. This is particularly true based on literature suggesting that GSEs are more successful when they are in combined units with faculty (Julius and Gumpert 2003: 199). Between 2012 and 2019, however, graduate assistants and contingent faculty did not seek representation in one bargaining unit. This is true even on campuses where both groups unionized within a year or two of each other. At NYU, American, Brandeis, and Tufts, the same unions represent distinct units of contingent faculty and graduate assistants. In contrast, there are now new bargaining units with graduates and undergraduates at Columbia, Harvard, and the New School. The lack of joint representation efforts may reflect tensions between the two groups over wages, benefits, and status (Berry 2005: 137).

Alternatively, the lack of new combined contingent faculty/GSE organizing might be a consequence of legal considerations. The *Columbia* decision was issued only after many new contingent faculty units had been certified. In addition, there might have been concerns that precedent against combined units with tenure-track faculty would be extended to a unit with contingent faculty [*Adelphi University* 1972; *State of New York (State University of New York)* 1991]. Lastly, unions might not have sought combined units out of fear that it would internalize potential conflict of interests between the groups of employees (Garbarino 1975: 116).

Total Unionization Growth: 2012–2019

Between 2012 and 2019, total GSE unionization grew precipitously. We estimate that 62,656² graduate assistants were in certified or recognized bargaining units in the United States in 2012 (Herbert, Apkarian, and van der Naald 2020). By 2019, the number grew by more than 20,000 to 83,050, a more than 32.5% increase (Figure 1).³ The growth during that period was substantially greater than between 2006 and 2011 (7,379) and outpaced similar upsurges during the two preceding five-year periods: 2000–2005 (18,012) and 1995–1999 (17,700) (Berry and Savarese 2012: xiv).

FIGURE 1
GSE Representation Growth 2012–2019



Sectoral Distinctions

The most striking aspect of the recent growth is its sectoral character. In 2012, GSE bargaining units were exclusively located at 30 public institutions and two research foundations affiliated with SUNY and CUNY (Berry and Savarese 2012: 50–54; Herbert, Apkarian, and van der Naald 2020: 20–21).

Between 2012 and 2019, there were 17 newly certified or recognized bargaining units, with 11 at private institutions containing the overwhelming majority (15,602, or 74.3%) of newly represented graduate assistants. In contrast, the total increase in public sector bargaining units was 5,379 (Table 1). Much of the private sector increase is attributable to large units at Columbia (4,256) and Harvard (5,050), constituting more than half of the total growth. New private sector units tended to exceed new public sector units in size, as the median new unit at private universities (1,052) is nearly double that of a new unit in the public sector (531). The largest and smallest units in 2012–2019 were in the private sector: 5,050 and 199 (Table 1).

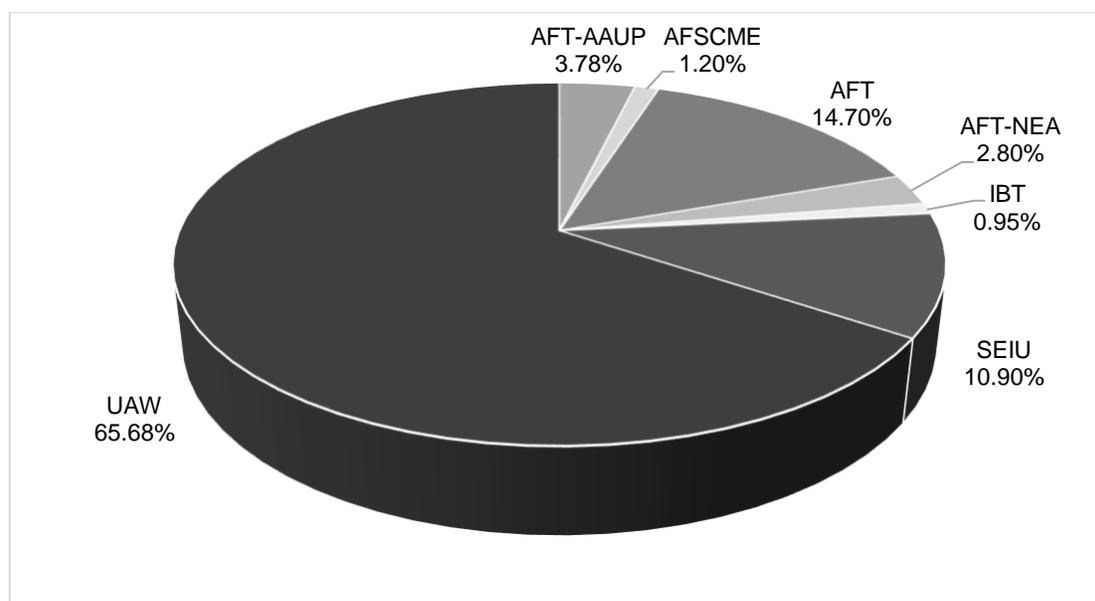
National Union Affiliations

The dominant role played by nontraditional educational unions in GSE unionization has continued since 2012 (Julius and Gumpert 2003: 188). Affiliations with unions without long histories of representing tenure-track faculty may reflect a reaction by graduate assistants to feeling proletarianized on campus despite their familial and class origins (Mullen, Goyette and Soares 2003; Posselt and Grodsky 2017).

In 2012, slightly more than 50% of graduate assistants were represented by the UAW and two other private sector unions (Berry and Savarese 2012: xiii). In the following seven years, 68% of newly unionized graduate assistants were in bargaining units represented by the UAW (Figure 2). This is due, in part, to large units that include undergraduate employees.

The recent period has seen the Service Employees International Union (SEIU), which has been successfully organizing contingent faculty, begin to organize graduate assistants as well. The union now represents over 2,200 graduate assistants in four private sector bargaining units (American, Brandeis, Loyola, and Tufts Universities) and two in the public sector (Illinois State University and Southern Illinois University–Edwardsville). AFT has also continued to increase its GSE representation, with new bargaining units at Brown, Georgetown, and Portland State.

FIGURE 2
New Graduate Student Union Membership by Affiliate, 2012–2019



LESSONS LEARNED AND THE ROAD AHEAD

The GSE union movement exemplifies the intertwined relationship of organizing, legal change, and unionization. From the start, GSE organizing campaigns have challenged academic capitalism, including the exploitation of precarious labor. Resistance to the restructuring of higher education, along with close alliances with other social movements, have been core elements of campus organizing. The application of social unionism has helped sustain the campaigns despite constant changes in leadership and membership.

Through organizing, litigation, and lobbying, graduate assistants have often broken through the legal barrier of misclassification. In many situations, the campaigns have been decades long. To affect change, graduate assistants have fought for voluntary recognition agreements, consent elections or card checks, reversal of adverse legal precedent, changes to state laws, and recognition of a state constitutional right to organize. Each time legal obstacles and institutional opposition have fallen, unionization has grown rapidly, as the surge during the period of 2013–2019 demonstrates.

By far the most difficult campaigns have been at large private universities. This is the result of well-financed institutional opposition, which has applied classic union avoidance strategies and adverse legal precedent. The data presented for the period before and after the *Columbia* decision reaffirm that when given a choice, graduate assistants vote overwhelmingly in favor of representation, with the margin of victory greater in third party–conducted elections than in NLRB elections,

While anti-union efforts by institutions have had some negative impact on electoral outcomes, it has not been a final determinative factor. Despite extensive litigation to deny graduate assistants the vote, 84% of private sector elections resulted in votes in favor of unionization. Nevertheless, university efforts to have graduate assistants reclassified as primarily students by a Trump-appointed NLRB Board majority led to a strategic labor organizing retreat on some campuses, even after favorable elections.

The NLRB's 2019 proposed rule to strip student workers of the right to unionize had placed a dark cloud over the future value of NLRB certification procedures for unionization. If the proposed rule had been adopted, graduate and undergraduate assistants at private institutions

would have had to resume collective action outside the law to improve their working conditions and attain voluntary recognition. The March 2021 withdrawal of the proposed rule and the upcoming appointments by President Biden to the NLRB Board will result in a greater degree of legal stability over the classification of graduate assistants as employees under the NLRA. The stability gained by those changes will set the stage for another surge in formal GSE representation efforts on private university campuses.

Future survey research, followed by structured interviews, is warranted to examine GSE perspectives, motivations, and priorities in all or some of the 39 formal representation efforts we discussed in this chapter. These methods can help examine more closely the determinants of voter behavior in specific representation elections and test the scope of GSE unity with contingent faculty and with other low-paid campus workers. Another avenue of research should be targeted at administrators and faculty members to understand their perspectives and motivations in accepting or opposing GSE unionization in 2012–2019. Such surveys would be particularly useful in understanding divisions on campus among academic labor groups and how those differences have impacted the growth in unionization.

Inherent in our research methodology are certain limitations. We relied on eligible voters to determine the size of the bargaining units, although the unit size might have changed, particularly because of the COVID-19 pandemic. In focusing on formal representation efforts, we did not examine organizing and advocacy efforts on other campuses that did not lead to a representation petition or a voluntary recognition agreement. Future research should update our data and expand the scope of our inquiry.

The GSE unionization movement has a great deal to teach misclassified and precarious workers in other industries who have begun organizing in today's gig economy. Many of those workers are confronting a familiar legal obstacle faced by graduate assistants: the claim that they are not employees and are thus without the right to collectively bargain. The successes of graduate assistants in winning battles over misclassification and attaining workplace protections through union representation in the face of employer opposition and legal limitations offer important lessons for other precarious and misclassified workers in the Second Gilded Age.

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ENDNOTES

¹ For a more detailed methodological description, see Herbert, Apkarian, and van der Naald 2020: 10.

² In 2012, the National Center for the Study of Collective Bargaining in Higher Education and the Professions recorded 64,424 graduate assistants in certified or recognized bargaining units in the United States (Berry and

Savarese 2012). This figure included teaching assistants at the University of Wisconsin at Madison (3,131), despite the union's decision in the year prior to not seek recertification under Wisconsin's restrictive collective bargaining law (Verburg 2011). The figure excluded existing GSE bargaining units at Montana State University and at the CUNY and SUNY research foundations. In calculating our total of 62,656, we subtracted the Madison unit size and added the unit sizes from Montana State (778) and the research foundations at CUNY and SUNY.

³ This figure includes undergraduate student employees in four of the new bargaining units at Columbia University, the New School, Harvard University, and the University of Chicago.