STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Graduate Employees Organization, Local 6297, IFT-AFT, AFL-CIO, Petitioner	)	
and	)	Case No. 2021-RS-0015-C
University of Illinois, Chicago Employer	)	

OPINION AND ORDER

I. Statement of the Case

On December 21, 2020, the Union filed the instant majority interest petition with the Illinois Educational Labor Relations Board (Board or IELRB) seeking to represent a group of unrepresented employees of the University of Illinois, Chicago (Employer or University or Respondent) for the purposes of collective bargaining, together with an existing bargaining unit of the University's employees it already represents.[1] The Employer opposed the RS petition. Following a hearing, an Administrative Law Judge (ALJ) issued a Recommended Decision and

[1] The existing bargaining unit was certified by the Board in 2005 as follows:

INCLUDED: All employees holding graduate assistantship appointments the total of which is at least .25 full-time equivalency and no greater than .67 full-time equivalency or who otherwise are granted a tuition waiver and who perform the duties of a Teaching Assistant or Graduate Assistant for the Employer. EXCLUDED: All employees holding graduate assistantship appointments of less than .25 full-time equivalency or greater than .67 full-time equivalency or who perform the duties of a Research Assistant, supervisors, managers, and confidential employees as defined by the Act; and all other employees.

The petitioned-for unit description is:

INCLUDED: All employees holding graduate assistantship appointments the total of which is at least .25 full time equivalency and no greater than .67 full time equivalency or who otherwise are granted a tuition waiver and who perform the duties of a Teaching Assistant or Graduate Assistant at UIC. EXCLUDED: All employees holding graduate assistantship appointments of less than .25 full time equivalency or greater than .67 equivalency or who perform the duties of a Research Assistant but do not perform the duties of a Teaching Assistant or Graduate Assistant for the Employer; supervisors, managers and confidential employees as defined by the Act; and all other employees.

Order (ALJRDO) finding the petitioned-for bargaining unit appropriate and directing the Board's Executive Director to process the RS petition in accordance with her decision and the Board's Rules. The Employer filed exceptions to the ALJRDO, and the Union filed a response to the exceptions. For the reasons discussed below, we find that the petitioned-for unit is appropriate.[2]

II. Factual Background

We adopt the facts as set forth in the underlying ALJRDO. Because the ALJRDO comprehensively sets forth the factual background of the case, we will not repeat the facts herein except where necessary to assist the reader.

III. Discussion

The Employer argues in its brief accompanying its exceptions that the petitioned-for unit does not comport with the appropriateness standard under Section 7 of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1 *et. seq.*, that the Union did not prove by clear and convincing evidence special circumstances and compelling justifications for establishment of the petitioned-for unit, that the Union did not prove by clear and convincing evidence that the petitioned-for unit would not lead to undue fragmentation or proliferation of bargaining units, and that the ALJ incorrectly found that it waived its right to hearing and its right to object to the petition. The exceptions will be attended to within the discussion below addressing the four arguments the Employer made in its brief.[3]

The Act excludes students from its protections. The question of when graduate students who also perform work for their universities may be considered educational employees for purposes

[2] The instant petition sought to add to the existing bargaining unit at issue in 2020-UC-0015-C (UC petition) the same group of employees it sought to include by the UC petition The matters were never consolidated and the UC petition was not withdrawn. We issue our opinion and order in 2020-UC-0015-C contemporaneously with this opinion and order.

[3] The Employer's exceptions to the ALJRDO are as follows: (1) To the ALJ's conclusions that the petitioned-for individuals were included in the existing unit by operation of the parties' conduct; (2) To the ALJ's conclusion that the Employer waived its right to hearing and consequently its right to object to the petition; (3) To the ALJ's conclusion that the timing of the Employer's January 14, 2021 email caused prejudice to another party; (4) To the ALJ's conclusion that the petitioned-for unit is appropriate under the Act and the Board's Rules; (5) To the ALJ's

(footnote continues to next page)

of the Act has proven difficult and the General Assembly has given different answers over the years. After the Union filed its initial petition to represent the existing unit but before the Board certified the unit, Section 2(b) of the Act was amended in 2004 to define RAs as students and TAs and GAs as employees. In January 2020, Section 2(b) of the Act was amended again, this time to provide that the term student does not include RAs. The legislature made its intent clear that RAs are educational employees entitled to the protection of the Act.

The Board has adopted rules setting forth presumptively appropriate bargaining units specific to the University of Illinois in 80 Ill. Adm. Code 1135.10-1135.30 (U of I Rules). The petitioned-for unit is not one of the presumptively appropriate units set forth in Section 1135.20.[4] The

conclusion that the historical pattern of recognition establishes RAs have been recognized as members of the unit when an appointees' TA and or GA was below the 25% threshold, yet no greater than the 67% cap, as well as when the total or combined dual appointment of RA and GA and or TA was at least 25% and did not exceed 67%; (6) To the ALJ's conclusion that the Union does not propose to change the character of the unit; (7) To the ALJ's conclusion that the Union proved by clear and convincing evidence that the petitioned-for unit is otherwise appropriate under Section 7 of the Act; (8) To the ALJ's failure to find that the petition-for unit is inappropriate due to the unit's exclusion of other individuals at UIC with the job title of RA who share a substantial community of interest with the petitioned-for RAs; (9) To the ALJ's conclusion that the Union proved by clear and convincing evidence that special circumstances and compelling justifications make it appropriate for the Board to establish the petitioned-for unit; (10) To the ALJ's failure to acknowledge the similarities in working conditions and job duties that the petitioned-for RAs share with other RAs at UIC which preclude a finding of unit appropriateness with the unit as petitioned-for; (11) To the ALJ's conclusion that the absence of another pending petition seeking the same individuals in a presumptively appropriate unit constitutes special circumstances and compelling justifications for the establishment of the petitioned-for unit, (12) To the ALJ's conclusion that the Union proved by clear and convincing evidence that establishment of the petitioned-for unit will not cause undue fragmentation of bargaining units or proliferation of bargaining units; (13) To the ALJ's conclusion that granting the petition will not increase the number of units the Employer must bargain with and will reduce the possibility that units will proliferate or that bargaining will become fragmented; (14) To the ALJ's conclusion that the Union is seeking a natural extension of the existing unit to include employees in the unit that have been previously recognized as bargaining unit members with a strong community of interest with existing bargaining unit members; and (15) To the ALJ's conclusion that there was no good cause for the timing of the Employer's January 14 email response.

[4] Section 1135.20(b) of the Rules lists the following units of educational employees employed at the Employer's Chicago campus or employed in units located outside Chicago that report administratively to the Chicago campus as presumptively appropriate for collective bargaining:

1) Unit 1: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured or tenure-track faculty, but excluding all faculty members of the College of Pharmacy, the College of Medicine and the College of Dentistry.

2) Unit 2: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) nontenure-track faculty, but excluding all faculty members of the College of Pharmacy, the College of Medicine and the College of Dentistry.

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Union argued before the ALJ that the U of I Rules did not apply to this matter. The ALJ found otherwise and, applying the heightened standard in the U of I Rules, determined that the petitioned-for unit is appropriate. The Union did not file exceptions to that portion of the ALJ's ruling. The University's exceptions address only the result of the ALJ's application of the U of I Rules but not whether they apply. We take the ALJ's ruling that the U of I Rules apply to this matter up on our own motion. See 80 Ill. Adm. Code 1110.105(k)(3). We find that the U of I Rules do not apply to the petition in this matter because the petition does not establish a new bargaining unit. Instead, it seeks to add employees to an existing bargaining unit. Section 1135.30 provides that bargaining units of University of Illinois employees other than the presumptively appropriate units set forth in the U of I Rules shall be "*established* only if the petitioner can show" the three factors in Section 1135.30(a) "by clear and convincing evidence." (Emphasis added.) But the unit here is already established, the petition does not seek to establish a unit. This means that the petitioned-for unit in this matter need only be appropriate under Section 7 of the Act.

In determining whether a bargaining unit is appropriate, the Board is guided by the language contained in Section 7(a) of the Act, which provides, in relevant part: "the Board shall decide in each case, in order to ensure employees the fullest freedom in exercising the rights guaranteed

3) Unit 3: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured, tenure-track or nontenure-track faculty members of the College of Dentistry.
4) Unit 4: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured, tenure-track or nontenure-track faculty members of the College of Medicine.
5) Unit 5: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured, tenure-track or nontenure-track faculty members of the College of Pharmacy.
6) Unit 6: All full-time non-visiting academic professionals exempted as Principal Administrative Employees from Section 36e of the State Universities Civil Service Act who have a .50 or greater appointment in that position.
7) Unit 7: All full-time and regular part-time professional employees, as that term is defined in Section 2(k) of the Illinois Educational Labor Relations Act who are not exempt from the State Universities Civil Service Act.
8) Unit 8: All full-time and regular part-time technical and paraprofessional employees not exempt from the State Universities Civil Service Act.
9) Unit 9: All full-time and regular part-time non-professional administrative and clerical employees not exempt from the State Universities Civil Service Act.
10) Unit 10: All full-time and regular part-time service and maintenance employees not exempt from the State Universities Civil Service Act.

by this Act." Pursuant to Section 7(a), when determining whether a bargaining unit is appropriate, the Board considers factors such as historical pattern of recognition and community of interest, including employee skills and functions, degree of functional integration, interchangeability and contact among employees, common supervisor, wages, hours and other working conditions of the employees involved, and the desires of the employees.

The historical pattern of recognition favors a finding that the petitioned-for unit is appropriate The historical pattern of recognition establishes that RAs have been recognized as members of the bargaining unit when their TA and/or GA was below the 25% threshold, yet no greater than the 67% cap, as well as when the total or combined dual appointment of RA and GA and or TA was at least 25% and did not exceed 67%. This determination, as indicated in the factual findings on page 14 of the ALJRDO, comes from Union Exhibits 9 and 10. Union Exhibits 9 and 10 are lists of various bargaining unit members provided by the Employer to the Union between 2012 and 2018. The names of at least two employees with the type of dual appointment at issue in this case, A. Greenberg and M. Baker, appear on those lists. That is, at least some employees in the position that the Union seeks to add to the bargaining unit were once considered part of that unit.

The Employer contends in its exceptions that the petitioned-for unit is inappropriate because the employees in the petitioned-for position share a substantial community of interest with other employees outside of the unit. The Board has recognized that more than one appropriate bargaining unit may cover the same employees. *Edwardsville Community Unit School Dist. No.* 7, 8 PERI 1003, Case Nos. 91-RC-0022-S, 91-RC-0023-S (IELRB Opinion and Order, November 21, 1991). The Board has rejected any requirement of maximum coherence or selection of a most appropriate unit if more than one potential configuration would be appropriate. *Id*. The Act does not require that a petitioned-for unit be the most appropriate unit, but rather an appropriate unit. *Black Hawk College Professional Technical Unit v. IELRB*, 275 Ill. App. 3d 189, 655 N.E.2d 1054 (1st Dist. 1995); *University of Illinois*, 7 PERI 1103, Case No. 90-RS-0017-S (IELRB Opinion and Order, September 13, 1991), *rev'd on other grounds*, 235 Ill. App. 3d 709, 600 N.E.2d 1292 (4th Dist. 1992). To refuse to find a bargaining unit appropriate because of the possible existence of a more appropriate alternative unit would not serve the statutory purpose of ensuring employees the fullest freedom in exercising the rights guaranteed them by the Act.

Board of Trustees of the University of Illinois, 21 PERI 119, Case No. 2005-RC-0007-S (IELRB Opinion and Order, July 14, 2005), aff'd, No. 4-05-0713 Ill. App. Ct. (4th Dist. 2006) (unpublished order). For the reasons discussed above, the petitioned-for unit is appropriate under Section 7 of the Act.

Even assuming, *arguendo*, that the U of I Rules applied here, the ALJ's determination that the Union satisfied the criteria in Section 1135.20 was correct. Under Section 1135.20, the Board may establish bargaining units of the University's employees outside of those set forth in in the U of I Rules if the petitioner, the Union in this case, can show by clear and convincing evidence that the unit is otherwise appropriate under Section 7 of the Act, that there are special circumstances and compelling justifications, and that establishment of a different unit will not cause undue fragmentation of bargaining units or proliferation of bargaining units. As discussed above, we find that the petitioned-for unit is appropriate under Section 7 of the Act. The ALJ correctly found clear and convincing evidence special circumstances and compelling justifications exist for the IELRB to establish a unit in this case that is different from the presumptively appropriate units. The Employer complains that contrary to the ALJ's finding, the petition seeks to change the character of the existing unit by adding RAs when RAs were previously excluded from the unit. Under that logic, no petition seeking to add a group of unrepresented employees to an existing unit would ever be appropriate because RS petitions by their very nature would change the character of the unit. What is more, because the petitioned-for position was at one point considered part of the bargaining unit, its inclusion in that unit via this petition would not change the character of the unit. The Board has determined that where, as here, there are no other petitions pending seeking to represent the same employees in a unit presumptively appropriate under the rules, it is a factor toward establishing special circumstances and compelling justifications. *University of Illinois*, 29 PERI 6, Case No. 11-RS-0018-S (IELRB Opinion and Order, May 24, 2012); *University of Illinois*, 21 PERI 119; *University of Illinois*, 6 PERI 1126. There is clear and convincing evidence that establishment of the petitioned-for unit will not cause undue fragmentation or proliferation of bargaining units. It would not threaten to interrupt services, cause labor instability, and cause continual collective bargaining and a multitude of representation proceedings. The Employer objects to the ALJ's dismissal of its concerns over the impact of future representation petitions and Board precedent as speculative

or contrived. The occurrence of future representation petitions can be characterized as speculative. Be that as it may, in this case as it is currently before the Board there is nothing that would lead to a determination that certifying the petitioned-for unit would cause continual collective bargaining or a multitude of representation proceedings. Thus, even if the U of I Rules applied to this matter, all the requirements for establishing a bargaining unit other than the presumptively appropriate units set forth have been met.

Finally, the Employer argues that the ALJ erred when she concluded that it waived its right to a hearing, and consequently its right to object to the petition, because its response to the petition was untimely filed. That issue is moot because despite the ALJ's ruling, the Employer was allowed a full evidentiary hearing and its objections to the petition were considered by the ALJ and again before us upon its exceptions to the ALJRDO.

IV. Order

We overrule the Administrative Law Judge's determination that the standard in 80 Ill. Adm. Code 1135.30(a) applies, find that the petitioned-for unit is appropriate under Section 7 of the Act, and direct the Executive Director to process the petition in accordance with our opinion.

V. Right to Appeal

This Opinion and Order is not a final order of the Illinois Educational Labor Relations Board subject to appeal. Under Section 7(d) of the Act, "[a]n order of the Board dismissing a representation petition, determining and certifying that a labor organization has been fairly and freely chosen by a majority of employees in an appropriate bargaining unit, determining and certifying that a labor organization has not been fairly and freely chosen by a majority of employees in the bargaining unit or certifying a labor organization as the exclusive representative of employees in an appropriate bargaining unit because of a determination by the Board that the labor organization is the historical bargaining representative of employees in the bargaining unit, is a final order." Pursuant Section 7(d) of the Act, aggrieved parties may seek judicial review of this Opinion and Order in accordance with the provisions of the Administrative Review Law upon the issuance of the Board's certification order through the Executive Director. Section 7(d) also provides that such review must be taken directly to the Appellate Court of a judicial district in which the Board maintains an office (Chicago or Springfield), and that "[a]ny direct appeal

to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision." The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: **August 19, 2021**
Issued: **August 19, 2021**

/s/ Steve Grossman
Steve Grossman, Member

/s/ Michelle Ishmael
Michelle Ishmael, Member

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601
312.793.3170 | 312.793.3369 Fax
elrb.mail@illinois.gov

Chairman Shayne, concurring:

I concur with the result reached by my colleagues that the petitioned-for individuals may properly be added to an existing bargaining unit of the University's employees that the Union already represents. I also concur that the U of I Rules do not apply in this case because a new unit is not being established, but rather individuals are being added to an existing unit. I concur that, because the U of I Rules do not apply in this case, the petitioned-for unit is an appropriate unit pursuant to Section 7 of the Act, and I join in the direction to the Executive Director to process the petition accordingly.

I disagree with my colleagues' finding that a historical pattern of recognition of the petitioned-for individuals exists. I am not persuaded that an employee list or employee lists covering six years that includes the names of two of the petitioned-for individuals constitutes a historical pattern of recognition of these individuals. More importantly, though, prior to January 2020, the Act specifically excluded the petitioned-for individuals from being in a unit because they were defined as "students." Therefore, there can be no historical pattern of these petitioned-for individuals being recognized as part of the unit when the statute specifically excluded them.

I also concur with my colleagues that, if the U of I Rules applied, the Union has shown by clear and convincing evidence that there are special circumstances and compelling justifications

to establish a unit that is different from the presumptively appropriate units. Unlike my colleagues, I do not reach this conclusion for the reasons listed by the ALJ. Instead, the recent statutory change is a special circumstance and compelling justification to establish a unit that is different from the presumptively appropriate units. Most significantly, in January 2020, the legislature amended the Act to exclude RAs from the definition of "student." The legislature made it as clear as it could that RAs are now educational employees entitled to the protections of the Act.

I agree that the petitioned-for individuals share a community of interest with the existing bargaining unit.

Therefore, I agree that the petitioned-for individuals may properly be recognized as part of the unit.

/s/ Lara D. Shayne

Lara D. Shayne, Chairman

Member Hays, concurring:

I concur with the result reached by my colleagues. Likewise, I find that the U of I Rules do not apply and the petitioned-for unit is an appropriate unit pursuant to Section 7 of the Act, and I join in the direction to the Executive Director to process the petition accordingly. Like Chairman Shayne, I disagree with my colleagues' finding of a historical pattern of recognition for the reason stated in her concurrence. However, I join my colleagues in their determination that if the U of I Rules applied, the Union has shown special circumstances and compelling justifications for the reasons listed by the ALJ. I agree that the petitioned-for individuals share a community of interest with the existing unit and may properly be recognized as part of the unit.

/s/ Chad D. Hays

Chad D. Hays, Member