STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Graduate Employees Organization, Local 6297, IFT-AFT, AFL-CIO,	)	
Petitioner	)	
and	)	Case No. 2020-UC-0015-C
University of Illinois, Chicago	)	
Employer	)	

OPINION AND ORDER

I. Statement of the Case

On November 19, 2019, Graduate Employees Organization, Local 6297, IFT-AFT, AFL-CIO (Union) filed a petition with the Illinois Educational Labor Relations Board (Board), 2020-UC-0015-C (UC petition), seeking to clarify an existing bargaining unit of employees of the University of Illinois, Chicago (Employer or University or Respondent) to include graduate assistants (GAs) and teaching assistants (TAs) who have dual appointments as research assistants (RAs) and whose combined total workload is between .25 and .67 full-time equivalency. The Employer opposed the petition. Following a hearing, an Administrative Law Judge (ALJ) issued a Recommended Decision and Order (ALJRDO) granting the UC petition. The Employer filed exceptions to the ALJRDO, and the Union filed a response to the exceptions.[1] For the reasons discussed below, we overrule the ALJRDO and dismiss the UC petition.

[1] This case was on the Board's agenda for the July 2020 meeting. Prior to the meeting, the Union reported that it was considering filing a majority interest petition. At the Union's suggestion, this case was not considered at the July 2020 meeting and the matter was held in abeyance. On December 21, 2020, the Union filed a majority interest petition, 2021-RS-0015-C, seeking to add to the existing bargaining unit at issue in the UC petition the same group of employees it sought to include by the UC petition. The matters were never consolidated and neither the exceptions nor the UC petition were withdrawn. We issue our opinion and order in 2021-RS-0015-C contemporaneously with this opinion and order.

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 filed the following exceptions to the UC ALJRDO: (1) none of the narrow circumstances under which a unit clarification is appropriate are present in this case; (2) the ALJ's bargaining unit description is manifestly incongruous with the definition of student in Section 2(b) of the Act at the time of the original certification in 2004; and (3) the ALJ's bargaining unit description fails to cure any alleged ambiguities in the original unit description because the original unit description is not ambiguous.

Pursuant to the unit clarification process, employees may be added to, or removed from, a bargaining unit without the requirement of a showing of interest or election. As a consequence, the unit clarification process is appropriate in only the following limited circumstances: (1) a newly created job classification that entails job functions that are similar to those of classifications covered by the existing unit; (2) an existing classification's job functions have been substantially altered since certification, creating genuine doubt as to whether the classification should continue to remain in, or be excluded from, the existing unit; or (3) there has been a change in statutory or case law that affects the bargaining rights of employees. *SEDOL Teachers Union v. IELRB*, 276 III. App. 3d 872, 658 N.E.2d 1364 (1st Dist. 1995).

The Illinois Educational Labor Relations Act, (Act or IELRA), 115 ILCS 5/1 *et. seq*, excludes students from its protections. However, the question of when graduate students who also perform work for their universities can be considered employees for purposes of the Act has proven difficult and the General Assembly has given different answers over the years. After the Union filed the petition to represent the existing unit, Section 2(b) of the Act was amended on October 14, 2004 to specify that the term student "includes graduate students who are research assistants primarily performing duties that involve research or graduate assistants primarily performing duties that are pre-professional, but

excludes graduate students who are teaching assistants primarily performing duties that involve the delivery and support of instruction and all other graduate assistants." Simply put, until it was amended again in 2020, the Act defined RAs as students and TAs and GAs as employees.

On August 27, 2005, the Board certified the Union as the exclusive representative of the following bargaining unit:

> **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.

Even though RAs were defined as students by the Act and excluded from the unit certified by the Board, for fourteen years following the certification, the Employer counted hours spent as RA toward determining the individual's eligibility to be in the unit when the RA also worked as a TA or a GA. In other words, the Employer recognized as part of the unit GAs and TAs who, but for their appointments as RAs, would not be at .25 full-time equivalency required to be part of the unit. However, in or around August or September 2019, the Union learned that the Employer changed its interpretation of the bargaining unit to only include employees if their appointments, independent of any RA appointments, total at least 25 percent of full-time equivalency, but with the addition of any RA appointments, total not more than 67 percent full-time equivalency.

In January 2020, after the instant UC petition was filed, Section 2(b) of the Act was amended again, this time to provide that the term student does not include RAs. The Union could have amended the petition to seek to include RAs in the unit because of the change in statutory caselaw but failed to do so. Thus, none of these circumstances where the unit clarification process is appropriate applies here. The ALJ recommended that the Board recognize a new circumstance where a unit clarification petition is appropriate, namely when the original certification was ambiguous. We decline to do so. The Act confers the right on employees to choose whether they wish to be represented. The Board

can infringe on that right only in the highly limited circumstances enunciated by the Court in *SEDOL*. The Union cites *Black Hawk College*, 10 PERI 1029, Case No. 93-UC-0005-C (IELRB Opinion and Order, January 7, 1994), for the proposition that the Board will accept the decision of the parties to use the unit clarification process even if the unit clarification petition does not fall into one of the usual categories for such petitions. The Court set the narrow parameters under which the unit clarification process is appropriate in *SEDOL* the year after the Board's opinion in *Black Hawk College* allowing a unit clarification under broader circumstances. This Board is bound by the higher courts' rulings. *Board of Trustees of the University of Illinois at Urbana-Champaign*, 25 PERI 108, Case No. 2009-RS-0001-S (IELRB Opinion and Order, June 30, 2009); *IEA-NEA Dist. 65 Educ. Secretarial and Clerical Ass'n (Tarr)*, 15 PERI 1054, Case No. 97-CB-0021-C (IELRB Opinion and Order, May 15, 1998); *Board of Trustees of the University of Illinois at Urbana-Champaign*, 9 PERI 1151, Case No. 90-RS-0017-S(IELRB Opinion and Order, October 13, 1993). Thus, we find the unit clarification petition is not appropriate because it does not fit within the narrow parameters set forth by the Court in *SEDOL*.

That the Employer recognized the employees at issue as part of the bargaining unit for fourteen years does not make them part of the unit. It is generally unlawful for an employer and a union to agree to add titles to or remove titles from a bargaining unit absent Board certification. *Macejak, et al./Plainfield CCSD 202/Plainfield Association of Support Staff, IEA/NEA*, 22 PERI 144, Case Nos. 2003-CA-0040-C and 2003-CB-0019-C (IELRB Opinion and Order, July 14, 2006). This is because the Board has the exclusive authority under Section 7 of the Act to "administer the recognition of bargaining representatives" of employees of educational employers. Section 7 "expressly obligates the Board to certify the exclusive bargaining representative to an educational employer through processes administered and controlled by the Board." *Triton College*, 2 PERI 1013, Case No. 84-AC-0003-C (IELRB Opinion and Order, October 16, 1985). See also, *County of Boone*, 19 PERI ¶ 74 (IL SLRB 2003) ("[t]he law is quite clear that both establishing representative status and making changes to a bargaining unit require the use of formal Board procedures culminating in unit certification.").

IV. Order

The Administrative Law Judge's Recommended Decision and Order is overruled, and Unit Clarification petition is dismissed.

V. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the Appellate Court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). Petitions for review of this Order must be filed within 35 days from the date that the Order issued, which is set forth below. 115 ILCS 5/16(a). The IELRB does not have a rule requiring any motion or request for reconsideration.

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

/s/ Lara D. Shayne
Lara D. Shayne, Chairman

/s/ Steve Grossman
Steve Grossman, Member

/s/ Chad D. Hays
Chad D. Hays, Member

/s/ Michelle Ishmael
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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. BACKGROUND

Petitioner, Graduate Employees Organization, Local 6297, IFT-AFT, AFL-CIO (Union), filed a petition with the Illinois Educational Labor Relations Board (Board) on November 13, 2019, seeking to clarify the scope of its existing bargaining unit of persons employed by University of Illinois, Chicago (University). The University opposed the petition.

The hearing in this matter was conducted before the undersigned on January 7, 2020, pursuant to the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq*, and Section 1110.160 of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135. Both parties were afforded and took advantage of an opportunity to file post-hearing briefs.[1]

II. ISSUES AND CONTENTIONS

Petitioner: The Union asserts in or about late August or early September 2019, the University changed its interpretation of the language establishing the parameters of the bargaining unit, in the Board's certification issued August 27, 2005, in Case No. 2004-RC-0012-C. During the fourteen years after the issuance of the certification, the Union contends the University recognized as members of its bargaining unit, graduate assistants (GAs) and teaching assistants (TAs) who also had appointments as research assistants (RAs), and who but for their appointments as research assistants, would not be at .25 full-time equivalency. The Union claims the unit clarification process is the only appropriate vehicle to determine the extent of the bargaining unit, where as in this case, there has been a change in the interpretation of the certification, the language establishing the bargaining unit, by the University, such that the change affects the bargaining rights of employees.

Employer: The University opposes the Union's petition, asserting it is an inappropriate use of the unit clarification process. It contends the plain language of the certification unequivocally excludes RAs from the bargaining unit, and moreover, at the time the certification was granted, the Act itself specifically prohibited

[1]The parties did not waive the operation of the 120-day rule set forth in Section 1110.160(g) of the Rules.

RAs from its ambit. Likewise, to the extent the University did, during the fourteen years after the issuance of the certification, recognize as members of the Union's bargaining unit, graduate assistants and teaching assistants who but for their appointments as research assistants would not be at .25 full-time equivalency, it asserts this was done in error and cannot be used to accrete such employees into the bargaining unit when they were specifically excluded. The University contends the certification language must be interpreted in a manner such that employees may only be in the unit if their appointments, independent of any research assistant appointments, total at least 25 percent of full-time equivalency, but with the addition of any research assistant appointments, total not more than 67 percent of full-time equivalency.

III. FINDINGS OF FACT

Graduate Employees Organization, Local 6297, IFT-AFT, AFL-CIO, is a labor organization within the meaning of Section 2(c) of the Act, and the exclusive representative of a bargaining unit comprised of certain of the University's employees. At all times relevant, University of Illinois, Chicago, was an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. The Union and University are parties to a collective bargaining agreement (CBA) for the unit at issue, with a term from August 16, 2018 to August 15, 2021.[2] Jt. Ex. 6. The description of the Union's bargaining unit, in the Board's certification issued August 27, 2005, in Case No. 2004-RC-0012-C, is 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.

Jt. Ex. 1.

In a letter dated June 26, 2013, the University offered Alyssa Greenberg appointments as a research assistant and a graduate assistant for the 2013-2014 school year, with the RA appointment being 26 percent of full-time equivalency and the GA appointment being 24 percent of full-time equivalency. Pet. Ex. 5. Additionally, therein, the University notified her that her assistantship was accompanied by a tuition waiver and the terms and conditions of her employment were set forth in the CBA between it and the Union. Pet. Ex. 5.

Similarly, in a letter dated November 13, 2015, the University offered Marissa Baker appointments as a research assistant and a graduate assistant from January 1 to May 15, 2016, with the RA appointment being 26 percent of full-time equivalency and the GA appointment being 24 percent of full-time equivalency. Pet. Ex. 6.

[2]Reference to exhibits in this matter will be as follows: Petitioner's exhibits, "Pet. Ex. ____"; Joint exhibits, "Jt. Ex. ____." References to the transcript of proceedings will be "Tr. ____."

Again, in addition, therein, the University notified her that her assistantship was accompanied by a tuition waiver and the terms and conditions of her employment were set forth in the CBA between it and the Union. Pet. Ex. 6.

In an email dated April 12, 2016, the University's associate director for labor and employee relations sent a document to the Union's executive director, in which she listed bargaining unit members entitled to backpay pursuant to a new CBA. Pet. Ex. 3. Among the employees recorded on the attached document were twenty-two persons who but for their appointments as research assistants would not be at .25 full-time equivalency. Tr. 39-40, 42-43; Pet. Ex. 4. Moreover, the evidence indicates since at least early 2014, until approximately late August or early September 2019, the University has regularly identified as members of the Union's bargaining unit, graduate assistants and teaching assistants who but for their appointments as research assistants, would not be at .25 full-time equivalency. Pet. Ex. 1. Finally, the University does not contest that graduate assistants and teaching assistants who are at .25 full-time equivalency or better, but who also have appointments as research assistants, where the total of their appointments do not exceed .67 full-time equivalency, are in the Union's bargaining unit. Tr. 57-58.

In or about late August or early September 2019, the Union learned the University changed its interpretation of the language establishing the parameters of the bargaining unit, to the extent it previously recognized as included, graduate assistants and teaching assistants who but for their appointments as research assistants, would not be at .25 full-time equivalency. Tr. 46-47. The instant petition followed.

IV. DISCUSSION AND ANALYSIS

Pursuant to the unit clarification process, employees may be added to, or removed from, a bargaining unit without the requirement of a showing of interest or an election. Accordingly, because of the undemocratic nature of the process, the Board has approved its use in only limited instances, holding that established bargaining units may be clarified in the following circumstances: 1. a newly-created job classification that entails job functions that are similar to those of classifications covered by the existing unit; 2. an existing classification's job functions have been substantially altered since certification, creating genuine doubt as to whether the classification should continue to remain in, or be excluded from, the existing unit; or 3. there has been a change in statutory or case law that affects the bargaining rights of employees. Local 604, IFT-AFT, AFL-CIO/Lockport Township High School District 205, 8 PERI ¶1111, 1992 WL 12647374 (IELRB 1992); Niles Township Federation of Teachers, IFT-AFT, AFL-CIO/Niles Township High School District 219, 6 PERI ¶1124, 1990 WL 10610863 (IELRB 1990); Limestone Federation of Teachers, Local 3886, IFT-AFT, AFL-CIO/Limestone Community High School District 310, 4 PERI ¶1150, 1988 WL 1588626 (IELRB 1988); Union

of Support Staff, IEA-NEA/Thornton Township High School District 205, 2 PERI ¶1103, 1986 WL 1234568 (IELRB 1986).

In this case, of the limited instances where established bargaining units may be clarified, only one is an analogous possibility: there has been a change in statutory or case law that affects the bargaining rights of employees. Although there is no change in relevant statutory or case law herein, the Union asserts the University has unilaterally changed the parties' longstanding interpretation of the language in the certification, which establishes the extent of the unit, thereby affecting the bargaining rights of employees. The University contends it is merely applying the unit description in the Board's certification as written. Both positions have merit, and the dispute cannot easily be resolved by referring to the language of the certification, as it was drafted with ambiguity. Other types of representation petitions available under the Act fail to address the essence of the problem presented by the instant circumstances—a not unreasonable interpretation of the certification language which resulted in the loss of bargaining rights for a relatively small number of employees. The unfair labor practice provisions of the Act are likewise unavailing, as there is no allegation or evidence the University acted in bad faith by applying in the manner it did, the language of the unit description in the Board's certification. Thus, the parties' dispute is rooted in the ambiguities drafted into the certification's description of the bargaining unit, and since the unit clarification process is the only available avenue to resolve that dispute, it must be employed.

As the University notes, the plain language of the certification unequivocally excludes research assistants from the bargaining unit, and moreover, at the time the certification was granted, the Act itself specifically prohibited research assistants from its ambit.[3] Nonetheless, to date, the parties interpret the language of the unit description as including graduate assistants and teaching assistants who have appointments of at least .25 full-time equivalency, but who also have appointments as research assistants, where the total of their appointments do not exceed .67 full-time equivalency. Thus, by itself, an appointment to the position of

[3]Compare the highlighted portion of the 2004 version of Section 2(b) of the Act:
(b) "Educational employee" or "employee" means any individual, excluding supervisors, managerial, confidential, short term employees, student….In this subsection (b), **the term "student" includes graduate students who are research assistants primarily performing duties that involve research or graduate assistants primarily performing duties that are pre-professional, but excludes graduate students who are teaching assistants primarily performing duties that involve the delivery and support of instruction and all other graduate assistants**; with the highlighted portion of the current version of Section 2(b) of the Act:
(b) "Educational employee" or "employee" means any individual, excluding supervisors, managerial, confidential, short term employees, student….In this subsection (b), **the term "student" does not include graduate students who are research assistants primarily performing duties that involve research, graduate assistants primarily performing duties that are pre-professional, graduate students who are teaching assistants primarily performing duties that involve the delivery and support of instruction, or any other graduate assistants**.

research assistant is insufficient to exclude a graduate assistant or teaching assistant from membership in the bargaining unit.

In keeping therewith, the University argues the fair and logical manner in which to interpret the language in the certification, which establishes the extent of the unit, is to find employees may only be in the unit if their appointments, independent of any research assistant appointments, total at least 25 percent of full-time equivalency, but with the addition of any research assistant appointments, total not more than 67 percent of full-time equivalency. Support for the University's position in this regard is derived by reading the first clause of the inclusion language—"[a]ll employees holding graduate assistantship appointments the total of which is at least .25 full-time equivalency and no greater than .67 full-time equivalency"—with the exclusion language—"[a]ll 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." This language indicates employees may only be in the unit if their appointments, independent of any research assistant appointments, total at least 25 percent of full-time equivalency, but with the addition of any research assistant appointments, total not more than 67 percent of full-time equivalency. It also seems to provide that an employee who performs the duties of a research assistant is entirely excluded, yet as noted above, that is not the way in which the language has been interpreted since certification. Instead, the University and Union agree that by itself, holding a research assistant appointment and performing the duties of that position is insufficient to exclude a graduate assistant or teaching assistant from membership in the bargaining unit.

Review of the second clause of the inclusion language—"[a]ll employees…who otherwise are granted a tuition waiver and who perform the duties of a Teaching Assistant or Graduate Assistant for the Employer"—along with the exclusion language—"[a]ll 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"—provides resolution. The second clause of the inclusion language extends membership in the unit to any employee 1. to whom the University has granted a tuition waiver and 2. who performs teaching assistant or graduate assistant duties for the University. Article IV, Section 5 of the University's General Rules Concerning University Organization and Procedure, provides as follows: "[w]aiver of tuition and service fees is granted for all members of the academic and administrative staff, excluding graduate assistants, whose appointments are 25 percent or more of full-time service." Jt. Ex. 8 at p. 29. Pursuant to the University's Statutes, Article IX, Section 3(c), research assistant is an academic rank recognized within the academic staff, and thus, under Article IV, Section 5 of the University's General Rules, research assistants are among the employees whom the University has granted tuition waivers. Jt. Ex. 8 at p. 29, 9 at p. 24. It follows then that research assistants who

in addition, perform teaching assistant or graduate assistant duties for the University, are included within the unit, as limited by the exclusion language.

Again, the exclusion language indicates employees may only be in the unit if their appointments total at least 25 percent of full-time equivalency, but total not more than 67 percent of full-time equivalency. In addition, the language excludes all employees who perform the duties of a Research Assistant, which is in apparent conflict with the inclusion language and the parties' understanding that by itself, an appointment to the position of research assistant is insufficient to exclude a graduate assistant or teaching assistant from membership in the bargaining unit, so long as the graduate assistant or teaching assistant appointment is for at least .25 full-time equivalency.[4] To reconcile the exclusion language with the inclusion language, it is necessary to find that the exclusion for "all employees…who perform the duties of a Research Assistant", means all those employees who perform only the duties of a research assistant, rather than the University's late 2019 interpretation: all those employees who perform primarily the duties of a research assistant. In other words, research assistants who in addition, perform teaching assistant or graduate assistant duties for the University, are included within the unit, so long as in total, their appointments are at least 25 percent of full-time equivalency, but not more than 67 percent of full-time equivalency. Accordingly, when the unit description is read and applied in its entirety, the University's decision to evaluate whether employees are included within the unit, independent of their research assistant appointments, lacks any basis therein.

V. RECOMMENDED ORDER

In order to cure the ambiguities in the description of the Union's bargaining unit, in the Board's certification issued August 27, 2005, in Case No. 2004-RC-0012-C, it shall be redrafted as follows:

Included: All employees who hold graduate assistantship appointments the total of which is at least .25 full-time equivalency and no greater than .67 full-time equivalency; all employees who are granted a tuition waiver by the University and perform the duties of a Teaching Assistant or Graduate Assistant for the Employer.

Excluded: All employees holding graduate assistantship appointments the total of which is less than .25 full-time equivalency; all employees holding graduate assistantship appointments the total of which is greater than .67 full-time equivalency; all employees who perform the duties of a Research Assistant, but do not perform the duties of either a Teaching Assistant or Graduate Assistant for the Employer; all supervisory, managerial, confidential, and/or short-term

[4]Due to the ambiguous nature of the unit description herein, the manner in which the parties applied the language of the unit description may aid in determining the extent of the bargaining unit. Generally, however, absent Board-certification, it is unlawful for an employer and union to agree to add titles to, or remove titles from, a bargaining unit. Janet Macejak, *et al.*/Plainfield Community Consolidated School District 202 and Plainfield Association of Support Staff, IEA-NEA, 22 PERI ¶144, 2006 WL 6823017 (IL ELRB 2006).

employees as defined in Section 2 of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, *et seq*.; all other persons employed by the Employer.

In addition, to the extent the University failed to recognize and treat as members of the Union's bargaining unit, graduate assistants or teaching assistants who also had appointments as research assistants, and who but for the appointments as research assistants, would not be at .25 full-time equivalency, the University shall make such employees whole.

VI. EXCEPTIONS

In accordance with Sections 1105.80(b), (d), and 1110.160(c)(3) of the Board's Rules, parties may file written exceptions to this Recommended Decision and Order together with briefs in support of those exceptions, not later than 14 days after receipt hereof. Parties may file responses to exceptions and briefs in support of the responses not later than 14 days after receipt of the exceptions and briefs in support thereof. Exceptions and responses must be filed, if at all, with the Board's General Counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. Pursuant to Section 1100.20(e) of the Rules, exceptions and responses sent to the Board must contain a certificate of service, that is, **"a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service."** If any party fails to send a copy of its exceptions to the other party or parties to the case, or fails to include a certificate of service, that party's appeal will not be considered, and that party's appeal rights with the Board will immediately end. See Sections 1100.20 and 1105.80 of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14 day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois, this 5th day of February, 2020.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

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John F. Brosnan
Administrative Law Judge