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

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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

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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

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Graduate Employee Organization Local 6297, IFT-AFT, Employee Organization, and Board of Trustees of the University of Illinois, Chicago, Employer.	)	Case No. 2021-RS-0015-C

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On December 21, 2020, Graduate Employee Organization Local 6297, IFT-AFT, (Union or Petitioner or GEO) filed a petition for self-determination (majority interest petition or petition) with the Illinois Educational Labor Relations Board (IELRB or Board) pursuant to Section 7 of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1, *et seq* and Section 1110.50 of the IELRB's Rules and Regulations, Ill. Admin. Code tit. 80 §1110.50. The Union's majority interest petition sought to represent a group of unrepresented employees for the purpose of collective bargaining, together with an existing bargaining unit represented by the Union, and employed by the Board of Trustees of the University of Illinois, Chicago (University or Employer or UIC).[1] The University objected to

[1] The existing bargaining unit description pursuant to certification in Case No. 2004-RC-0012-C issued on August 27, 2005 by the Executive Director 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. R. Ex. 7.
The proposed bargaining unit description 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 at UIC.

the instant petition on January 14, 2021, setting forth that the unit proposed by the Union in this matter is not presumptively appropriate for collective bargaining under the Board's Rules, that it is inappropriate to add new titles to a unit in a piecemeal manner, and that there is not clear and convincing evidence in this case of the requisite factor's enumerated in Section 1135.30(a) of the Board's Rules. In light of the issues raised by the parties, a hearing was conducted on April 1, 2021 before the undersigned Administrative Law Judge (ALJ).[2] During the hearing, both parties had the opportunity to call, examine, and cross-examine witnesses, introduce documentary evidence, and present arguments. Both parties filed post-hearing briefs.[3]

I. Issues and Contentions

The Union's position is that prior to September 2019, the University treated graduate employees with research assistant (RA) dual appointments as members of the Union as long as their total appointment was between 25 percent and 67 percent. Thereafter, the Union alleges that the Employer took the position that assistants with dual appointments whose teaching assistant (TA) or graduate assistant (GA) appointments fell below .25 were not properly in the unit. The Union states that TA's or GA's with appointments of at least .25, independent of RA appointment percentage, are considered and treated as if they are in the bargaining unit, even if the RA appointment is larger than the TA or GA appointment percentage, so long as the total appointment does not exceed .67. The petitioned-for employees account for 11 assistants, who constitute RA dual appointees with combined TA and or GA appointments below 25 percent.

The Union argues that the Employer waived its rights by failing to raise the appropriate unit objection in a timely manner because it did not raise the issue in related unit clarification Case No. 2020-UC-0015-C, nor did it file a timely objection under Section

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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.

[2] On February 18, 2021, the instant case was reassigned to the undersigned. In light of the University's January 14th objection to the petition, a Notice of Representation Hearing was issued to the parties in order to address the question of representation raised in this case. Subsequently, upon request by the undersigned to do so, the Union advised that it was not inclined to sign a Waiver of One Hundred and Twenty Day Issuance because the University's objection was untimely, and given the related pending petition for clarification of a unit in Case No. 2020-UC-0015-C involving the same unit as the instant case, the long wait had prejudiced the petitioned-for employees' ability to receive benefits under the contract between the parties.

[3] Post-hearing briefs were simultaneously filed by the parties on May 11, 2021.

1110.105(d) of the Board's Rules to the instant petition. The Union adds that employees covered by the petition have been prejudiced because their quest for representation under the Act has been delayed by the Employer's objection to the majority interest petition.

Next, the Union argues that the heightened standard of review expressed in the IELRB's University of Illinois bargaining unit rules are not applicable here because they do not cover either the employees in the current bargaining unit or the employees sought by the instant petition, and applying such will deny employees their right to be represented by an exclusive representative of their choice. Instead, the Union proposes that the proper appropriateness standard to be applied here is found in Section 7 of the Act, which it contends is satisfied by the evidence presented in this case. Such evidence consists of the history of the Employer treating the employees in question as part of the unit for several years under three different collective bargaining agreements (CBA), the employees desire to be included in the existing bargaining unit as evinced by the showing of interest, and the petitioned-for employees shared community of interest with the employees in the existing unit, including other dual appointees.

Lastly, the Union argues that the facts in this case present special and compelling circumstances that warrant an exception to the University of Illinois bargaining unit rules. Specifically, the Union contends that granting the petition would not result in the fragmentation of bargaining or the proliferation of bargaining units, but would instead honor the desires of the employees. Moreover, it reasons that the graduate employees in the existing bargaining unit and the petitioned-for employees share many crucial terms and conditions of employment. The Union maintains that dual appointees are often subject to the same faculty supervision in their research and teaching roles, and that the petitioned-for employees share their greatest community of interest with the employees with dual appointments who are already in the existing bargaining unit.

On the other hand, the Employer argues that the petitioned-for unit is not otherwise appropriate under the Act. It contends that RA's, TA's and GA's perform different functions, utilize different skills, work in a range of different fields and departments, have different supervision and reporting structures, and that RA's are paid using research grants, distinct from TA and GA funding. Alternatively, the Employer reasons that even if there is a shared common interest between RA's, TA's and GA's, the petitioned-for bargaining unit excludes numerous RA's who share a substantial community of interest with the petitioned-for employees based on their RA appointments of at least .25 and below

or equal to .67, identical benefits, including a tuition waiver, same job functions, perform work in the same departments, and are under the same supervision. The Employer suggests that granting the Union's petition would result in bizarre outcomes for the Employer, such as a small number of RA's being represented by the Union who have minority TA or GA appointments, despite primarily performing the same RA duties as their unrepresented counterparts.

Secondly, the Employer argues that the University of Illinois bargaining unit rules are indeed applicable here, and the petition should be dismissed because the Union has not demonstrated by clear and convincing evidence that the unit is warranted by special circumstances and compelling justifications.

Next, the Employer maintains that approval of the petitioned-for unit will result in undue fragmentation of bargaining units or a proliferation of bargaining units because 11 out of more than a thousand RA's, a small fragment, would be represented by a labor organization, which the Board's Rules were intended to prevent, and allowing such could result in different groups of RA's being represented by different labor organizations with different collective bargaining agreements.

The Employer refutes that it waived its appropriateness objection because an employer cannot intentionally or unintentionally waive an argument in one case by not raising it in another case involving different issues and a different type of proceeding.

The questions presented are as follows: 1) whether the University's January 14th objection to the petition was effectively waived; 2) whether the University of Illinois bargaining unit rules or the traditional majority interest petition rules found in Section 1110.120(a) are applicable to the petitioned-for bargaining unit; and 3) whether the petitioned-for bargaining unit is appropriate under the Act and Board's Rules.

II. Facts

The parties stipulated in a joint Pre-Hearing Memorandum as follows:[4]

1. The University of Illinois (also referred to herein as the "University of Illinois System" or the "System") is a state university governed by the Board of Trustees of the University of Illinois. The Board of Trustees of the University of Illinois (the "Board", "Employer," or "Respondent") is an "educational employer" within the

[4] See ALJ Ex. 14.

meaning of Section 2(a) of the Illinois Educational Labor Relations Act (the "IELRA").

2. The University of Illinois Statutes (the "University Statutes") describe the educational policy, organization, and governance of the University of Illinois System. The General Rules Concerning University Organization and Procedure (the "General Rules") supplement the University Statutes and deal with administrative organization, the powers, duties, and responsibilities of officers of the System, and various administrative matters. The University of Illinois System currently includes the following three universities: the University of Illinois Urbana-Champaign ("UIUC"), the University of Illinois Springfield ("UIS"), and the University of Illinois Chicago ("UIC").[5]
3. Each university within the System has a chancellor/vice president who serves as the chief executive officer of the university and who reports to the President of the System. Additionally, each university within the System has a "provost and vice chancellor for academic affairs" who serves as the chief academic officer under the chancellor/vice president. Each university also has one or more other vice chancellors who are appointed annually by the Respondent on the recommendation of the chancellor/vice president of the university and the President of the System.
4. The University of Illinois Chicago (UIC) is a public university within the University of Illinois System. As of the fall of 2020, UIC employed approximately 9,296 full-time equivalent (FTE) employees.
5. Consistent with the University Statutes, UIC is headed by a Chancellor. The following eight Vice Chancellor positions at UIC report to the Chancellor of UIC: Vice Chancellor for Academic Affairs and Provost; Vice Chancellor for Administrative Services; Vice Chancellor for Advancement; Vice Chancellor for Health Affairs; Vice Chancellor for Innovation; Vice Chancellor for Strategic Marketing and Communications; Vice Chancellor for Research; and Vice Chancellor for Student Affairs.
6. Graduate assistantship appointments include appointments to perform work in the following roles at UIC: Graduate Assistant (GA), Graduate Research Assistant (RA),

[5] The University of Illinois Chicago is the relevant University in the instant case.

and Graduate Teaching Assistant (TA). Graduate students may also be employed to work at UIC on an hourly basis.

7. The UIC Human Resources [HR] Department maintains a document entitled Graduate Assistantship HR Resource Guide. The Graduate Assistantship HR Resource Guide describes the GA role as follows: Duties include but are not limited to duties primarily in support of administrative functions, such as: clerical support; technical/support services; webmaster/assisting faculty with web pages, network administration/end user support, equipment management, monitoring instructional and service labs; translation; routine support for publications such as writing copy of university or department newsletters or non-research publications, correspondence, etc.; advising/providing curricular and academic advice to students, providing support to advisors; and outreach duties such as publicizing programs and activities to campus and public constituencies, and working with/assisting with event management.

   The TA role is described in the Graduate Assistantship HR Resource Guide as: Duties include but are not limited to, duties primarily in support of instruction and educational services such as: leading discussion sections; leading class discussions, holding lectures; the design of course materials; exam preparation; proctoring and grading assignments or exams; holding office hours; note-taking; meeting special needs of students with disabilities; and/or any other educational activity or service provided.

   The Graduate Assistantship HR Resource Guide describes the RA role as: Research activities may include, but are not limited to, the following examples of applying and mastering research concepts, practices, or methods of scholarship: conducting experiments; organizing or analyzing data; presenting findings; collaborating with others in preparing publications; and conducting institutional research for an academic or administrative unit.

8. The duration of a graduate assistantship appointment at UIC may be for a full academic year or for a shorter duration. An academic year at UIC starts on August 16 and concludes on May 15. Within the academic year, there are two terms. The

fall term or fall semester runs from August 16 through December 30,[6] and the spring term or spring semester runs from January 1 through May 15. There is also a summer term that runs from May 16 though August 15.

9. In order to be eligible for a graduate assistantship, students must minimally be enrolled in a graduate degree program at UIC (non-degree seeking students are not eligible), and they must minimally be enrolled for at least 8 semester hours during the fall and spring terms. A semester hour during the fall and spring semesters represent one classroom period of 50 minutes weekly for one semester in lecture or discussion or a longer period of time in laboratory, studio, or other work.
10. Consistent with the General Rules, waiver of base-rate tuition, i.e., the in-State graduate (not professional) tuition rate, is granted for graduate assistants on appointment for at least 25 percent but not more than 67 percent of full-time service. A graduate assistant's percent of full-time service or full-time equivalency or FTE is calculated on a scale of 1.0, with 1.0 being the equivalent of 40 hours per week.
11. Colleges announce job opportunities at UIC for graduate students through internal student email distribution lists, e-mail listservs or departmental postings. In addition, UIC maintains a job board at the following website: http://jobs.uic.edu/job-board. When a unit/department/college within UIC extends an offer of an assistantship to a graduate student, the unit/department/college issues an offer letter explaining the terms of the assistantship. Such terms may include, among other things, tuition waiver eligibility, compensation, appointment duration, and duties. When extending an offer of an assistantship to a graduate student, units at UIC use an assistantship offer letter template maintained by the UIC Graduate College and accessible at the following website: https://grad.uic.edu/funding-awards/assistantships/. Graduate students wishing to accept an offer of a graduate assistantship must accept an offer letter either by signing the letter in person or by forwarding acceptance via email to the hiring unit/department/college.
12. The Petitioner is a labor organization within the meaning of Section 2(c) of the Act.
13. On April 8, 2004, the Petitioner filed a Majority Interest Petition under Section 7 of the Act seeking to represent the following unit at UIC: Included – All employees holding graduate assistantship appointments the total of which is at least. 25 full

[6] For other purposes not relevant here, the fall semester or term may be considered to have concluded on December 15.

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 University at UIC. 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. On August 27, 2005, the Executive Director of the IELRB issued an Order of Certification in Case No. 2004-RC-0012-C certifying the GEO as the exclusive representative of the bargaining unit.

14. Following the certification of the bargaining unit in August of 2005, the Employer and the Petitioner entered into a series of collective bargaining units. Employer and the Petitioner are currently signatories to a collective bargaining agreement (CBA) effective August 16, 2018 through August 15, 2021 governing the employment of employees in the bargaining unit. The current CBA was ratified on April 22, 2019.
15. The Employer and the Union were previously signatories to a CBA effective August 16, 2015 through August 15, 2018 (2015-2018 CBA or predecessor CBA). The predecessor CBA was ratified on November 18, 2015. The first or initial CBA between the Employer and the Union was ratified on July 7, 2006 and was effective August 16, 2006 through August 15, 2009 (2006-2009 CBA or the initial CBA).
16. According to UIC records, in March of 2021, there were eleven graduate students at UIC whose combined TA and GA appointments put them at less than .25 full time equivalency but whose combined TA, GA and RA appointments put them at or above .25 full time equivalency and below the .67 full time equivalency.
17. On or about June 26, 2013, Alyssa Greenberg was offered a graduate assistantship in UIC's College of Architecture, Design, and the Arts. The letter reflecting the offer stated that Alyssa Greenberg was being offered an appointment of 26% RA and 24% GA time. The letter also stated: The terms and conditions of employment, including but not limited to benefits and wages, for this appointment may be governed by a collective bargaining agreement between the Board of Trustees of the University of Illinois and the Graduate Employees' Organization…"
18. On or about November 13, 2015, Marissa Baker was offered a graduate assistantship appointment at UIC. The letter reflecting the offer stated that Ms. Baker was being offered a 25% research assistant appointment and a 24% graduate

assistant appointment. The letter to Ms. Baker also contained the language cited above regarding the terms and conditions of employment being governed by a CBA between the Board of Trustees of the University of Illinois and the GEO.

19. The Employer and the Union agree that graduate students whose combined GA and TA appointments put them at or above .25 full time equivalency are or should be in the GEO's bargaining unit even if they also have an appointment as an RA.
20. The number of hours a graduate employee with a graduate assistantship is expected to work is based on the FTE outlined in the offer letter. Minimum stipend rates for bargaining unit members are set forth in the CBA's between the Employer and the Union. Non-bargaining unit graduate students with assistantships at UIC who qualify for a tuition waiver have historically been subject to the same minimum stipend rates as GEO bargaining unit members.
21. Graduate student eligibility for a tuition waiver at UIC is the same for bargaining unit members as it is for non-bargaining unit members. As described in the Graduate Assistant Resources Guide and the CBA's between the Employer and the Union, non-bargaining unit graduate students at UIC with an assistantship and tuition waiver receive many of the same benefits as GEO bargaining unit members.
22. As of March 2021, there were 1,061 graduate students at UIC with a RA appointment. Of that amount, 843 received a tuition (.25 FTE to .67 FTE) waiver while 218 did not (below .25 FTE or in excess of .67 FTE).
23. As of March 2021, there were 11 graduate students at UIC whose combined TA and GA appointments put them at less than .25 full time equivalency but whose combined TA, GA and RA appointments put them at or above .25 full time equivalency and below .67 full time equivalency.

At the hearing, the Union and the Employer each called the same witness during its respective case-in-chief. Michael Ginsburg, Ph.D. (Ginsburg), Associate Vice Chancellor of Human Resources, the Employer's proposed witness, testified on behalf of the Union as well as the Employer.[7] Tr. 50, 91. Dr. Ginsburg has been in his current position since 2015.[8]

[7] Reference to exhibits in this matter will be as follows: Union exhibits, U. Ex. ___; University exhibits, R. Ex. ___; Joint exhibits, Jt. Ex. ___; ALJ exhibits, ALJ Ex. ___. Reference to the transcript of proceedings will be Tr. ___.

[8] Immediately preceding Dr. Ginsburg's current role, he was the Vice Chancellor for Student Affairs from 1984 to 2015, and while serving in that former role, he was a member of the management bargaining team for previous versions of the parties' CBA's. Tr. 92-93.

Tr. 92. As the Associate Vice Chancellor for Human Resources, Dr. Ginsburg oversees the Human Resources operation at the University, which includes the Office of Labor and Employee Relations, and labor relations concerning the bargaining unit at issue. Tr. 50, 91.

Based on the testimony of the witness and documentary evidence in the record, I find as follows:

The Employer is subject to the jurisdiction of the IELRB. ALJ Ex. 5. The Union is the exclusive representative within the meaning of the Act of certain employees employed by the Employer as graduate student employees. ALJ Ex. 5.

The currently represented bargaining unit has approximately 1500 members, who hold the title of teaching assistant (TA) and or graduate assistant (GA) and have accepted appointments of at least .25 and not more than .67 Full-Time Equivalency (FTE).[9] FTE constitutes the percentage of appointment time the individual is employed in their assistantship. Tr. 51, 52, 59, 60. A 100 percent appointment typically consists of a 40-hour week. R. Ex. 14; Tr. 124. A 25 percent appointment or FTE is 10 hours a week, and a 67 percent is approximately 27 hours a week (26.8). R. Ex. 4; Tr. 124. A number of the TA's and or GA's have dual appointments, whereby the individual concurrently holds a research assistant (RA) appointment. Provided the dual appointees' TA and or GA appointment is at least .25 and no greater than .67, that individual is currently recognized by both parties as being included in the existing bargaining unit and covered under the CBA. Tr. 51, 154-155.

Colleges, graduate programs, administrative offices, and research centers at the University appoint graduate students as teaching, research, or graduate assistants.[10] R. Ex. 14. Colleges are academic units that provide instruction and also have research

[9] According to the Union, currently, it represents a bargaining unit of approximately 1600 teaching and graduate assistants employed by the Employer. Some of those members have dual appointments as RA's. Union Post Hearing Brief.

[10] Dr. Ginsburg testified as follows: that the Vice Chancellor for Academic Affairs and Provost could have all three appointments; the Vice Chancellor for Administrative Services could have GA's; the Vice Chancellor of Advancement could have GA's; the Vice Chancellor for Health Affairs could have all three appointments; the Vice Chancellor for Innovation could have GA's; the Vice Chancellor for Strategic Marketing and Communication could have GA's; the Vice Chancellor for Research could have RA's and GA's; the Vice Chancellor for Student Affairs could have GA's and TA's; the separate bubble that reports directly to the Chancellor and Vice President could have GA's; the Discovery Partners Institute could have GA's and RA's; the Cancer Center has RA's; Business Administration could have TA's, RA's and GA's; Education could have TA's, RA's and GA's; Engineering could have all three; Architecture could have all three; the Graduate College could have GA's and RA's; Liberal Arts could have all three; the College of Medicine could have RA's and GA's; Nursing could have all three; Pharmacy could have all three; Public Health could have all three; Applied Health Sciences could have all three; Social Work could have all three; Urban Planning could have all three; the Library could have GA's and RA's. R. Ex. 10; Tr. 97-100, 144-146.

components. R. Ex. 3; Tr. 100. Units not listed as colleges have administrative duties and no teaching duties. R. Ex. 3; Tr. 100. Graduate student employees are generally assigned to departments, with a department head who is responsible for the department, but typically are supervised by and work directly with the faculty member or administrator they are assigned to within their respective appointment(s). Tr. 67-69, 110-112, 152. Each department and or sub department is connected to one of the University's 16 colleges, and each college falls under the Vice Chancellor for Academic Affairs and Provost or the Vice Chancellor for Health Affairs. R. Ex. 3; Tr. 60-61, 69, 103. Typically TA's teach undergraduate students, within academic teaching departments. Tr. 71. Assistantships are generally appointed on a term-by-term basis or may be appointed for a full academic year. R. Ex. 4. GA and TA assistantships are covered under a CBA where total or combined appointment FTE is at least .25 and up to .67. R. Ex. 4. Employer records document that the RA position is not part of the Union if not held in conjunction with a TA or GA that is between 25 percent and 67 percent. R. Ex. 4. The minimum rates for stipends are set each year. R. Ex. 4. The Union contract determines TA and GA minima, and campus administration sets RA minima. R. Ex. 4; Tr. 74. Units or colleges have the flexibility to offer an amount above the minima stipend for TA's, GA's and RA's, but each assistantship category must be compensated at least according to the set minimum. R. Ex. 4; R. Ex. 14; Tr. 128, 148, 162.

There are 11 proposed bargaining unit members covered by the petition in this case with dual appointments. R. Ex. 11; Tr. 53, 58, 79. All three assistantship roles receive tuition and service fee waiver under certain conditions.[11] The 11 petitioned-for employees receive the same health insurance benefits, dental benefits, vision benefits, eligibility for 403/457 contribution plans, sick leave, personal leave, holiday leave, bereavement leave, parental leave, family medical leave, jury duty leave, military leave, workers compensation, and professional and conference leave as the members covered under the CBA. R. Ex. 4; R.

[11] The assistantship must be between 25-67% time. Students must be degree seeking (non-degree students are NOT eligible). Students must hold an assistantship for 91 calendar days (41 calendar days during summer term). The days are defined as including the week before instruction begins through the last day of final exams. Students must meet and maintain Graduate College registration requirements. Students must register for a minimum of 8 hours during the fall and spring semester and 3 hours in the summer term. International students are required to register for a greater number of hours if their appointment is less than 50%. Students must be in good academic standing. Students must have a permanent social security number. Students must successfully meet the requirements of the assistantship. R. Ex. 9; R. Ex. 14.

Ex. 9; R. Ex. 14; Tr. 79-81, 135. TA, GA and RA weekly clock hours are based on a 40-hour workweek, and they are paid on the same schedule of pay periods. R. Ex. 4; R. Ex. 14; Tr. 84-85; Union Post Hearing Brief. Tuition, excluding a tuition differential, and some fees are waived for assistants in the bargaining unit, as well as the petitioned-for employees. R. Ex. 14. The same registration requirements apply, and the same provisions regarding assistantships and student loans are applicable to all three groups. R. Ex. 14; Tr. 85-86. The 11 petitioned-for employees have the same salary minima as those currently in the bargaining unit. Tr. 79. Ten petitioned-for employees have dual appointments including RA and TA. One petitioned-for employee has all three appointments. R. Ex. 11. The 11 petitioned-for employees' appointments are assigned to various colleges, with the majority enlisted under liberal arts and sciences. R. Ex. 11. The petitioned-for employees hold TA and or GA appointments, independent of their RA FTE, short of the .25 threshold for recognized inclusion in the existing bargaining unit. R. Ex. 11.

There were a total of 1,061 RA's at the time of the hearing. R. Ex. 10; Tr. 140. All RA's with 25 percent FTE or greater up to 67 percent receive tuition waivers, independent of their dual appointment. Tr. 104, 107-108, 130. RA's under those same conditions also receive stipends, the same pay schedule, campus care, a dental plan, vision care benefits, 403(b)/457 benefits, sick leave, personal leave, holiday leave, bereavement leave, parental leave, family medical leave, jury duty leave, military leave, workers compensation and professional and conference leave. R. Ex. 14; Tr. 130-134. Pursuant to the CBA, the University pays 100 percent of the student health service fee for members in the existing bargaining unit. Tr. 159-160. The University pays 100 percent of the health service fee for eligible RA's. Tr. 159-160. Pursuant to the CBA, the University contributes towards bargaining unit members' health insurance as well as their dependent's health insurance. Tr. 160-161. RA's receive the same individual contribution benefit but do not receive a dependent contribution. Tr. 161-162. As mentioned earlier, generally the RA appointment, whether currently covered under the CBA or not, is funded by a grant provided to the Employer specifically sponsoring that research, whereas GA's and TA's are paid from a different allocation. Tr. 165-166.

Generally, an offer letter template for a graduate student appointment is issued, specific to each appointment. R. Ex. 4; R. Ex. 5; R. Ex. 14; Tr. 117-120. Generally, GA and TA offer letters have "governed by a CBA" language, whereas RA offer letters do not

because they are not part of the existing bargaining unit. Tr. 120-122. Generally, those with dual appointments are issued separate offer letters. Tr. 122-123.

The GA offer letter template generally provides that such should be issued for all TA and GA appointments between .25 and .67 FTE, and includes notice of the specific appointment, duration, FTE percentage, stipend amount and recurrence, tax guidance, waiver information, duty details, and appointment criteria. R. Ex. 5; R. Ex. 14. The GA offer letter states further that terms and conditions of employment for the appointment may be governed by a CBA between the parties. R. Ex. 4; R. Ex. 5.

The TA offer letter template generally provides that such should be issued for all TA and GA appointments between .25 and .67 FTE, and includes notice of the specific appointment, duration, FTE percentage, stipend amount and recurrence, waiver information, duty details and appointment criteria. R. Ex. 5A; R. Ex. 14. The TA offer letter states further that terms and conditions of employment for the appointment may be governed by a CBA between the parties. R. Ex. 4; R. Ex. 5A.

The RA offer letter template generally provides notice of the specific appointment of graduate research assistant, duration, FTE percentage, monthly stipend amount, waiver information, appointment criteria, and duty details. R. Ex. 4; R. Ex. 5B; R. Ex. 14. RA's are not part of the Union, therefore information about the union should not be included in the RA offer letter. R. Ex. 14.

An appointment offer letter issued to Nam Nguyen in November of 2020, one of the petitioned-for employees, provided notice of his appointment as a graduate research assistant, the duration, the FTE percentage (33) and monthly stipend amount, waiver information, appointment qualifications, main duties and the name of the departmental supervisor he was assigned to.[12] R. Ex. 13.

An appointment offer letter issued to Marissa Baker in November of 2015 provided notice of her appointment as a RA and GA with a duration for the spring semester and a total or combined appointment of 50 percent, which broke down to 26 as a RA and 24 as a GA, monthly stipend amount, waiver information, appointment criteria, departmental supervisors name, and main duties. The letter provided further that the terms and conditions of employment including but not limited to benefits and wages for the appointment were governed by a CBA between the parties. U. Ex. 8. Ms. Baker appeared

[12] Nam Nguyen holds an FTE of .17 as a TA. R. Ex. 11.

on a February 2016 bargaining unit member list furnished to the Union from the Employer, and was identified as a bargaining unit member on a list receiving a negotiated stipend adjustment. U. Ex. 9; U. Ex. 10.

An appointment offer letter issued to Alyssa Greenberg in June of 2013 provided notice of her appointments as a RA and GA for the 2013-2014 academic year, the duration, the FTE percentages of 26 as a RA and 24 as a GA, monthly stipend amount, waiver information, appointment criteria, duty details, and departmental supervisor's name. The letter also stated that the terms and conditions of employment including but not limited to benefits and wages for the appointment were governed by a CBA between the parties. U. Ex. 7. Ms. Greenburg appeared on a February 2014 bargaining unit member list furnished to the Union from the Employer. U. Ex. 10.

A number of GA's and or TA's who were below the 25 percent FTE threshold appeared on various bargaining unit member listings between 2014 and 2019. The aforementioned GA's and TA's were dual appointees in which his or her RA percentage placed them above .25 but no greater than .67, and as result were included in the existing bargaining unit by operation of the parties' conduct. U. Ex. 9; U. Ex. 10.

Here, the Employer argues that bargaining unit members are required to hold a GA and or TA of at least 25 percent independent of his or her RA percentage, but no more than 67 percent including the RA appointment percentage for proper inclusion in the bargaining unit. Whereas, the Union argues for TA's and GA's who have .25 with or without their RA percentage to be appropriately included in the bargaining unit, not to exceed the 67 percent FTE.

III. Discussion and Conclusions of Law

The Union argues that the Employer waived its rights by failing to raise the appropriate unit objection in a timely manner because it did not raise the issue in the related unit clarification petition, nor did it file a timely objection under Section 1110.105(d) of the Board's Rules to the instant petition. The Employer refutes that it waived its appropriateness objection because an employer cannot intentionally or unintentionally waive an argument in one case by not raising it in another case involving different issues and in a different type of proceeding.

As a procedural matter, Section 1110.105(d) of the IELRB's Rules provide that within 21 days after receipt of the petition, parties served with the petition may file a written response to the petition. The response shall set forth the party's position with

respect to the appropriateness of the unit, any proposed exclusions from the unit, any allegations of fraud or coercion in obtaining the showing of interest, and any other issues raised by the petition. A party that fails to file a timely response without good cause shall be deemed to have waived its right to a hearing. Good cause will include when there is no prejudice to another party or the other parties have consented to a hearing without the filing of a timely response.

Pursuant to the certificate of service, the instant majority interest petition was served on the Employer electronically on December 21, 2020. On January 14, 2021, twenty-four days later, Mathew Jones, counsel for the Employer, emailed IELRB Agent Tracey Trigillo that he was out of the office during much of the holidays and was still getting caught up on emails from December. Mr. Jones advised that the Employer had an objection to the petition.

On February 24, 2021, the undersigned notified the parties that a hearing would be conducted to resolve the appropriateness issues raised in the case. That same day, Stephen Yokich, counsel for the Union, advised that the Union's position was that the Employer waived its objection to the unit because it was not timely filed under the Board's Rules and the Employer failed to raise an objection to the same unit in a previously filed and related pending unit clarification matter.

Herein, I find that pursuant to an application of the Board's Rules, the Employer waived its right to a hearing, and consequently its right to object to the majority interest petition, given its untimely-filed response, absent a showing of good cause.[13]

For argument sake, even if the Employer had not effectively waived its rights, the record reveals that the petitioned-for bargaining unit is appropriate under the IELRB Rules and Act, as will be explained.

The second material procedural concern raised by the parties is whether Section 1135, applicable to University of Illinois bargaining units, or Section 1110.120 of the Board's Rules govern the bargaining unit at issue. The Union argues that the University of Illinois bargaining unit rules should not be applied, whereas, the Employer argues that the University of Illinois bargaining unit rules are appropriate here. Section 1135.30(a) provides in relevant part that petitions for units other than those set forth in Section 1135

[13] Neither the Employer nor the Union substantiated its reasoning with legal or regulatory authority with respect to the Union's claim that the Employer waived its right to object in the instant case due its failure to raise such in the related unit clarification matter, Case No. 2020-UC-0015-C.

may be filed and shall be processed in accord with the regular rules of the IELRB concerning representation cases (80 Ill. Adm. Code 1110). Units of educational employees of the Board of Trustees of the University of Illinois other than those set forth herein shall be established only if the petitioner can show three specific elements by clear and convincing evidence. Section 1110.120(a) and Section 7(a) of the Act provides that in determining the appropriateness of a unit for purposes of collective bargaining, the Board shall consider all relevant factors, including, but not limited to, such factors as historical pattern of recognition, community of interest, including employee skills and functions, degree of functional integration, interchangeability and contact among employees, common supervision, wages, hours, and other working conditions of the employees involved, and the desires of the employees.

The Union's position is that the IELRB's Rules for University of Illinois bargaining units do not apply to the petition, and it does not believe that it has to prove special circumstances and compelling justifications by clear and convincing evidence in order to sustain the petition in this case. The Union reasons that there is simply no reason to apply any heightened standard of review to this petition when the application of the higher standard will deny employees their right to be represented by a union. It contends that neither the existing bargaining unit or petitioned-for employees are covered by the University of Illinois bargaining unit rules of the IELRB, since there is no unit in the University of Illinois bargaining unit rules for graduate employees. In such a situation, the Union argues that application of the provisions of Section 1135.30(a) to petitions could deprive employees of their statutory rights under the Act. The Union cites to *Association of Academic Professionals, IEA-NEA*, 2005 IL ELRB LEXIS 86, 21 PERI 119 for the proposition that unless a bargaining unit not provided for in the rules is established, employees would be deprived of their statutory right to be represented by a union. The Union contends that since there is no unit that is appropriate for the graduate employees covered by the petition in the Rules, and furthermore, under the Employer's argument, any unit could potentially violate the Rules and preclude employees from organizing under the Act. However, contextually in *Association of Academic Professionals*, the Board reasoned that there was clear and convincing evidence with respect to the special circumstances and compelling justifications factor of the three-part test, deeming it appropriate for the Board to establish a unit different from the presumptively appropriate unit of non-visiting academic professionals, because the petition in that case sought to represent visiting

academic professionals, who were not included in the presumptively appropriate units. The Union accurately states that there is no relevant presumptively appropriate unit here covered by the Rules, unlike the case cited. The principle aside, that unless a bargaining unit not provided for in the rules is established, employees would be deprived of their statutory right to be represented by a union, apparently the Union proposes to apply the rationale from one element contained in the three element University of Illinois bargaining unit rules exception, and applied in that case, to argue that the University of Illinois rules shouldn't be applied here to avoid an unfair result, which I find unpersuasive.

The Union also cites to *Board of Trustees of the University of Illinois*, 2012 IL ELRB LEXIS 15, 29, PERI 6 for the proposition that the IELRB has repeatedly approved petitions to allow the addition of smaller groups of employees to historical bargaining units, even when the smaller groups do not contain all of the employees who would logically be encompassed in the unit, and even when the resulting unit would not be presumptively appropriate under the rules. The Union goes further to assert that while the existing bargaining unit in this case was not formed prior to the passage of the IELRB, it resembles a historical unit because it is a longstanding unit that is not covered by the Rules, and because additions to that unit will not cause either the proliferation of bargaining units or the fragmentation of bargaining. Again, the Union argues here not to apply the University of Illinois bargaining unit rules by citing a case that applied, and whereby the Union satisfied the burden in the University of Illinois bargaining unit rules which I find unconvincing. The cited case is further distinguished since it involved a historical bargaining unit, and a proposed bargaining unit less broad than the one set forth in the presumptively appropriate units. Here, the unit in question is not historical, as the Union concedes, nor are the facts here analogous to a proposed bargaining unit less broad than one set forth in the presumptively appropriate units primarily because as the Union mentions, there is no presumptively appropriate unit covering graduate assistants in the University of Illinois bargaining unit rules to begin with. Therefore I reject the Union's premise in those regards.[14]

[14] The Union argues that it is possible to interpret the cases as holding that anytime a petition seeks employees who are not covered by the Rules, that a "special circumstance and compelling justification" exists under Rule 1135.30(a). The Union states that if the employees are not covered by the Rules, this interpretation of the rules threatens to deny employees the right to petition in units that would otherwise be appropriate under the IELRA. The Union maintains that it is analytically better to distinguish cases that involve no employees covered by the Rules from cases

The Employer's position is that since the petitioned-for unit is not one of the presumptively appropriate units listed in Section 1135.20 of the Board's Rules, the exception found in Section 1135.30(a) of the Board's Rules is applicable, and the Union failed to demonstrate such by clear and convincing evidence.

I find an appropriate application of the University of Illinois bargaining unit rules to this case in the language of the Rules themselves. Section 1135.30(a) of the Board's Rules provide that the units set forth in Section 1135.20 are presumptively appropriate. Section 1135.20 provides that with respect to educational employees employed at the Chicago campus or employed in units located outside Chicago that report administratively to the Chicago campus, the following units shall be 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.

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.

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where the Rules cover either the existing unit or employees who are covered by a representation petition, and the same could be said for cases involving units protected by the historical recognition provisions of the IELRA. The IELRB has addressed the Union's concern regarding denial of employee's rights in Section 1135.10, which provides in relevant part that nothing in the University of Illinois bargaining unit rules shall be construed to supersede rights of educational employees under Section 7 of the Act, including the fullest freedom in exercising their rights guaranteed under the Act, including bargaining collectively through representatives of their own free choice. Additionally, though the unit in the present case is not historical, an overarching theme the Board has long recognized is that the University of Illinois bargaining unit rules are not designed to be used as a technicality to keep educational employees from being added to historical units.

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.

Section 1135.30(a) goes on to state that petitions for units other than those set forth in this Part may be filed and shall be processed in accordance with the regular rules of this agency concerning representation cases (80 Ill. Adm. Code 1110). Units of educational employees of the Board of Trustees of the University of Illinois other than those set forth herein shall be established only if the petitioner can show the following by clear and convincing evidence:

1) that the unit is otherwise appropriate under Section 7 of the Illinois Educational Labor Relations Act;

2) that special circumstances and compelling justifications make it appropriate for the Illinois Educational Labor Relations Board to establish a unit different from those set forth above;

3) that establishment of a different unit will not cause undue fragmentation of bargaining units or proliferation of bargaining units. Undue fragmentation of bargaining units or proliferation of bargaining units means that the number of bargaining units is such

> as to threaten to interrupt services, cause labor instability, and cause continual collective bargaining and a multitude of representation proceedings.

In giving effect to the clear and unambiguous construction of the language of the Rules, particularly the exception to presumptively appropriate bargaining units for collective bargaining at UIC, I find that the proposed bargaining unit petitioned-for by the Union in this case, encompassing educational employees of the Board of Trustees of the University of Illinois, and being apart from of any presumptively appropriate bargaining unit set forth in Section 1135.20, can only being established if the Petitioner Union can show the above three enumerations by clear and convincing evidence. Thus, I reject the Union's contention that the University of Illinois bargaining unit rules of Section 1135 do not apply in this case.

Notwithstanding its previously discussed positions, in it's post hearing brief, the Union argues in the alternative that the bargaining unit sought by the petition is appropriate under Section 7 of the Act, given the shared terms and conditions of employment with members of the existing bargaining unit, which includes dual appointees, the Employer's treatment of the employees covered by the petition as unit members for many years, and in light of the employees' desire of representation demonstrated in the petition. Additionally, the Union argues that special circumstances exist here under the University of Illinois bargaining unit rules, that granting the petition will not change the character of the existing unit, that there are no other pending petitions for the employees in question, and that granting the petition will promote collective bargaining since the existing unit already contains employees with similar dual appointments. Lastly, the Union insists that granting the petition will not cause undue fragmentation or proliferation of units because it will not increase the number of units the Employer must bargain with, nor does it threaten to cause the interruption of services or continual bargaining since employees with similar appointments were already covered by the existing CBA until the Employer changed its mind. Instead the Union maintains that granting the petition will reduce the possibility that units will proliferate or that bargaining will become fragmented, and granting the petition will promote collective bargaining since the Union already represents some employees with dual appointments.

First, I find that the proposed unit comports with the appropriateness standard under Section 7 of the Illinois Educational Labor Relations Act. In determining the

appropriateness of a unit, the IELRB shall decide in each case, in order to ensure the employees the fullest freedom in exercising the rights guaranteed by the Act, the unit appropriate for the purpose of collective bargaining, based upon but not limited to such factors such as historical pattern of recognition, community of interest, including employees skills and functions, degree of functional integration, interchangeability and contact among employees, common supervision, wages, hours and other working conditions of the employees involved, and the desires of the employees. Section 7 does not require that a proposed unit be the most appropriate unit, but that the unit be appropriate. *Black Hawk College Professional Technical Unit v. IELRB*, 275 Ill.App.3d 189, 655 N.E.2d 1054 (1st Dist. 1995); *Sandburg Faculty Association v. IELRB*, 248 Ill.App.3d 1028, 618 N.E.2d 989 (1st Dist. 1995). The Act does require that employees receive the fullest freedom in exercising the rights guaranteed under the Act. *Id.* A bargaining unit is not appropriate if, under all of the circumstances, it is artificial or arbitrary. *SEDOL Teachers Union v. IELRB*, 276 Ill. App.3d 872, 658 N.E.2d 1364 (1995). 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).

Here, the historical pattern of recognition establishes that RA's have been recognized as members of the bargaining unit when an appointees' TA and or GA was below the 25 percent threshold, yet no greater than the 67 percent cap, as well as when the total or combined dual appointment of RA and GA and or TA was at least 25 percent and did not exceed 67 percent. This factor weighs in favor of the petition being granted. The community of interest that petitioned-for employees have with members of the existing bargaining unit also favors granting the petition by mere design of the assistantship role. Despite utilizing different skill sets, RA's perform the same related nature of departmental support function for the Employer, analogous to the TA and GA roles. For example, GA's provide administrative support or assistance to designated departments, RA's provide research support or assistance to designated departments, and TA's provide instructional support or assistance to designated departments, and each similarly reports to a respective faculty member or administrator. RA's have the same appointment duration parameters, eligibility requirements, benefits, and tuition waiver eligibility as TA's and GA's. The same offer procedure for the three-assistantship roles is employed, although different templates

are utilized depending on the assignment. RA's receive the same minimum stipend rates as bargaining unit members, are on the same pay schedule, and hours for RA's, TA's and GA's are based on a 40-hour workweek. Although RA's are assigned to certain departments at the University, which is no different from TA's and GA's also respectively being assigned to certain departments to perform certain functions, they are integrated in various colleges and units with TA's and GA's. For example, the departments of Business Administration, Education, Engineering, Nursing, Public Health, Social Work, Applied Health Sciences and Urban Planning could potentially have GA's, TA's and RA's working within. Significantly, there are dual appointees holding RA assistantships already in the existing bargaining unit, and specifically by operation of the parties, dual appointees whose TA and GA percentages (independent of their RA time) are below 25 percent have been included in the bargaining unit. Notably, RA's perform different duties from TA's and GA's, similar to TA's performing different duties from GA's, yet the existing certified bargaining unit includes the latter two roles. I also note that the fund from which RA's are compensated differs from TA's and GA's, and RA's do not receive a dependent contribution for health insurance, as distinguished from TA's and GA's, however, despite these dissimilarities, the proposed unit need not be the most appropriate unit, only an appropriate unit. Moreover, while there is a community of interest such as job tasks, benefits package, and work locations between the petitioned-for employees and non-petitioned-for RA's who are not in the existing bargaining unit and who hold a .25 FTE to .67 FTE, denying the petition because of the possible existence of a more appropriate alternative unit with those RA's would not serve the statutory purpose of ensuring employees the fullest freedom in exercising their rights guaranteed them by the Act. Furthermore, the desires of the petitioned-for employees, as demonstrated by the showing of interest supporting the petition, favors the establishment of the petitioned-for bargaining unit. The last consideration that supports granting this petition is that the record does not reveal any resemblance of bargaining unit artificiality or arbitrariness, especially given the strongly shared community of interest as analyzed above.

Next, I find that special circumstances and compelling justifications, as defined on a case-by-case basis and by a totality of the circumstances, make it appropriate for the Illinois Educational Labor Relations Board to establish a unit different from those set forth above. *University of Illinois at Chicago*, 6 PERI 1126 (IELRB 1990). Although the existing unit is not a historical one, there is a historical pattern of recognition present between the

parties, as discussed above, and the Petitioner does not propose to change the character of the existing unit. Rather the Petitioner 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 and commonalities, notably the dual assistantship appointment, with existing bargaining unit members. Furthermore, there are no other petitions pending which seek the same employees in a unit presumptively appropriate under the Rules. Moreover, there is no history of bargaining suggesting that the addition of the employees sought will lead to unstable bargaining or that more stable bargaining will be achieved in other units closer to or in conformity with the Rules. *See Board of Trustees of the University of Illinois*, 6 PERI 1126, Case No. 90-RS-0012-C, et al. (IELRB Opinion and Order, March 8, 1990).

Lastly, under the exception to the University of Illinois bargaining unit rules analysis, I find that establishment of a different unit will not cause undue fragmentation of bargaining units or proliferation of bargaining units. Undue fragmentation of bargaining units or proliferation of bargaining units dictates that the number of bargaining units is such as to threaten to interrupt services, cause labor instability, and cause continual collective bargaining and a multitude of representation proceedings. The Employer's position that granting this petition could result in different groups of RA's being represented by different labor organizations with different collective bargaining agreements is speculative. Contrarily, the evidence supports the Union's claims 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 since employees of this nature were already covered by the existing CBA.

IV. Recommended Order

In light of the above determinations that the record satisfies Section 1135.30(a)(1) 1135.30(a)(2) and 1135.30(a)(3) of the Board's Rules, I find that the proposed bargaining unit in the majority interest petition filed in the above-captioned case is appropriate under the Act and the IELRB's Rules. The Executive Director is hereby directed to process the majority interest petition in accordance with this decision and the IELRB's Rules.

V. Exceptions

In accordance with Section 1110.105(k)(2) 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 seven (7) days after receipt of this decision**.

Parties may file responses to exceptions and briefs in support of the responses **not later than seven (7) 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. At this time, parties are highly encouraged to direct said exceptions and responses, if at all, to the general email account at ELRB.mail@illinois.gov. 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 1110.105 of the Rules, concerning service of exceptions. **If no exceptions have been filed within the seven (7) day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter, this Recommended Decision and Order will become final and binding on the parties.**

Dated: June 22, 2021
Issued: Chicago, Illinois

Dawn Harden
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Dawn Harden
Administrative Law Judge

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