

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

University of Illinois, Chicago,)
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)
Employer)
)
and) Case No. 2022-RS-0013-C
)
)
UIC United Faculty, Local 6456,)
IFT-AFT, AFL-CIO,)
)
Petitioner)

OPINION AND ORDER

I. Statement of the Case

UIC United Faculty, Local No. 6456, IFT-AFT, AFL-CIO (Union or Petitioner) filed a majority interest 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.*, seeking to add employees of University of Illinois, Chicago (University or Employer or Respondent) in the title or classification of Bridge to Faculty Program Scholar to its existing bargaining unit of full-time non-tenure track (NTT) faculty members. There are approximately twenty-nine persons employed in the petitioned-for title and approximately 648 employees in the existing unit. The University objected to the petition based on its contention that the petitioned-for unit is inappropriate under both the presumptively appropriate bargaining unit rules for the University's Chicago campus and under the traditional community of interest factors in Section 7(a) of the Act. The parties appeared for a hearing before an Administrative Law Judge (ALJ). Following the hearing, the ALJ issued a Recommended Decision and Order (ALJRDO) finding that the petitioned-for unit was appropriate for the purposes of collective bargaining. The University filed exceptions to the ALJRDO, and the Union filed a response to the exceptions. For the reasons discussed below, we affirm the ALJRDO.

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

Despite its twenty-four exceptions to the ALJRDO, the University contends that this case boils down to a single question. Paraphrased, that question is whether it is appropriate to combine the petitioned-for employees and the employees in the existing unit into a single unit when the inherent employment goal of these two groups is not the same. The answer to that question is yes because 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).

The Board's rules set 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 second and third of the University's exceptions to the ALJ's application and/or conclusions of law address the U of I Rules. The University argues that the ALJ erred in failing to apply the U of I Rules and instead applied the traditional community of interest factors set forth in Section 7 of the Act to determine that the petitioned-for unit is appropriate. The University contends that the ALJ mistakenly interpreted this Board's recent finding in *University of Illinois, Chicago*, 38 PERI 31, Case No. 2021-RS-0015-C (IELRB Opinion and Order, August 19, 2021) to mean that the U of I Rules do not apply to petitions that seek to add employees to an existing unit. In *University of Illinois, Chicago*, the petition sought to add employees to an existing unit that was not one of the presumptively appropriate units set forth in

the U of I Rules. The existing unit at issue in this case is one of the presumptively appropriate units set forth in the U of I Rules, at Section 1135.20(b)(2). According to the University, the Board did not hold in *University of Illinois, Chicago*, that Section 1135.20 does not apply to petitions seeking to add to an existing unit that is one of the presumptively appropriate units. Contrary to the University's assertion, this Board's holding in *University of Illinois, Chicago* was not limited to non-conforming units:

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.

Like *University of Illinois, Chicago*, the petition in this case does not seek to establish a new unit. Thus, the ALJ correctly found that the petition need only be appropriate under Section 7 of the Act.

Four through twelve and fourteen through sixteen of the University's exceptions to the ALJ's application and/or conclusions of law essentially argue that the ALJ incorrectly found a community of interest between the petitioned-for employees and the employees in the existing unit and that he failed to acknowledge the significance of the differences between these two groups of employees. In determining whether a bargaining unit is appropriate, the Board is guided by 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 by this Act." Pursuant to Section 7(a) of the Act, the Board considers the following community of interest factors to resolve unit determinations: 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. In this case, the question is whether the Bridge to Faculty Program Scholars share a community of interest with members of the existing bargaining unit. The

Board has recognized that more than one appropriate bargaining unit may cover the same employees and rejected any requirement of maximum coherence or selection of a most appropriate unit if more than one potential configuration would be appropriate. *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). For the reasons discussed in the ALJRDO, the petitioned-for unit is appropriate under Section 7 of the Act.

University exception seventeen to the ALJ's application and/or conclusions of law is that the ALJRDO failed to acknowledge the potential over and under fragmentation caused by the petition's exclusion of two individuals, the Bridge to Faculty Program Scholars in the Colleges of Medicine and Pharmacy, from the potential unit. The University complains that there is a risk that in the future, Bridge to Faculty Program Scholars in the Colleges of Medicine and Pharmacy may attempt to form their own separate, stand-alone bargaining units. The current unit specifically excludes faculty members of the Colleges of Pharmacy, Medicine and Dentistry. In its response to the University's exceptions, the Union indicates that if the Board finds these two positions should be included in the unit, it seeks to represent these two employees as well. However, it did not amend its petition to include these positions. As the Board stated in *University of Illinois, Chicago*, the occurrence of future representation petitions can be characterized as speculative. 38 PERI 31. It was not enough to find the petitioned-for unit in that case inappropriate, nor is it in this case currently before the Board.

Exceptions one and two to the ALJ's findings of fact and exception one to the ALJ's application and/or conclusions of law concern the use of the term "Fellow" instead of "Scholar" as the title for the position the Union seeks to add to the unit by the petition. The petition describes the proposed unit as "All full-time (i.e., employees who have 0.51 or greater appointment as a faculty member) non-tenure track faculty, including all fellows in the Bridge to Faculty program." Yet the ALJRDO and the Union in its response to exceptions refer to the petitioned-for position as Bridge to Faculty Program Scholars and Bridge to Faculty scholars. The University contends that Fellows are not

educational employees under the IELRA. In response to the petition, the University indicated that one of the names on its list of employees it provided per 80 Ill. Adm. 1110.105(b), L. Bookhart, was not truly a University employee, but was a postdoctoral fellow whose salary was not paid by the University, nor did she receive standard University employment benefits, and thus is not an educational employee within the meaning of Section 2(b) of the Act. While disputing that “Fellows” are not educational employees, the University does not appear to contend that the approximately 29 people it referenced in its brief in support of its exceptions as Bridge to Faculty postdoctoral research associates are not educational employees. For purposes of the certification that issues in this matter, the resulting added title or position should be styled as Bridge to Faculty Program Scholars.

University exception thirteen to the ALJ’s application and/or conclusions of law is that the ALJRDO failed to acknowledge or otherwise take official notice of postdoctoral unionization patterns across the country, which, it claims, generally exclude faculty. The University cites examples of postdoc-only bargaining units that were certified in the last few years at University of California, Rutgers University, University of Massachusetts, University of Connecticut, Columbia University and University of Washington. Likewise, there are also recently certified bargaining units that include postdocs and faculty. *New College of Florida*, 46 FPER ¶245 (Fl. Pub. Rel. Com. 2020) (Postdoctoral scholars to existing faculty bargaining unit); *Goucher College*, 364 N.L.R.B. 882 (N.L.R.B. August 11, 2016); *Oregon State University*, 2020 OR PER LEXIS 34 (Bargaining unit of faculty and postdocs certified June 2018); Fordham University (Bargaining unit certified November 2017), <https://www.nlrb.gov/case/02-RC-207806> (last visited June 28, 2022); University of Oregon (Bargaining unit certified 2012) <https://www.aau.org/NR/rdonlyres/FB48F887-F2C2-4B2E-A2EF-E5B830C72FA3/0/oregoncert.pdf> (last visited June 28, 2022); see generally William A. Herbert, Jacob Apkarian, Joseph van der Naald, 2020 *Supplementary Directory of New Bargaining Agents and Contracts in Institutions of Higher Educ.*, 2013-2019, National Center for the Study of Collective Bargaining in Higher Ed. and the Professions, Hunter College, City University of New York,

<https://www.hunter.cuny.edu/ncscbhep/assets/files/SupplementalDirectory-2020FINAL.pdf> (last visited June 8, 2022). The ALJRDO's lack of discussion or acknowledgment on that point is not reversible error because despite the existence of units across the country that have it both ways, the question here is not whether there is a more appropriate bargaining unit for the placement of the petitioned-for employees, but rather, whether the petitioned-for unit is an appropriate unit.

The remainder of the University's exceptions, three through six to the ALJ's findings of fact, even if correct, do not affect the outcome of the case. For that reason, there is no need for the Board to examine or resolve them.

IV. Order

We affirm the ALJRDO. The petitioned-for unit is appropriate under Section 7 of the Act. The Executive Director is directed to process the petition in accordance with this opinion and order.

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: **July 20, 2022**
Issued: **July 20, 2022**

/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
Michelle Ishmael, Member

/s/ Gilbert F. O'Brien
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STATE OF ILLINOIS
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

UIC United Faculty, Local 6456,)
IFT-AFT, AFL-CIO,)
Petitioner)
and) Case No. 2022-RS-0013-C
University of Illinois, Chicago,)
Employer)

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. BACKGROUND

Petitioner, UIC United Faculty, Local No. 6456, IFT-AFT, AFL-CIO (Union), filed a petition with the Illinois Educational Labor Relations Board (Board) on February 23, 2022, seeking pursuant to a showing of majority interest, to represent approximately 29 persons employed by the University of Illinois, Chicago (University), in the title or classification of Bridge to Faculty Program Scholars, in its existing bargaining unit of approximately 648 full-time non-tenure track faculty members. The petitioned-for employees are currently unrepresented for purposes of collective bargaining. The University opposed the petition, asserting as configured, the petitioned-for unit was inappropriate under both the presumptively appropriate bargaining unit rules for the University's Chicago campus, at Section 1135.20(b) of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135, and under the traditional community of interest factors, at Section 7(a) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.*

The hearing in this matter was conducted before the undersigned on March 24, 2022, pursuant to Section 1110.105 of the Board's Rules. Both parties were afforded and took advantage of an opportunity to file post-hearing briefs.¹

II. ISSUES AND CONTENTIONS

Petitioner: The Union seeks to represent in its current bargaining unit of full-time non-tenure track faculty members, the approximately 29 persons employed by the University in the job title or classification of Bridge to Faculty Program Scholar. The Union asserts the petitioned-for unit is appropriate within the meaning of the Act.

Employer: The University opposes the Union's petition, asserting under Section 1135.20(b) of the Rules, the resulting bargaining unit is inappropriate. Additionally, the University contends if the petition is not

¹Reference to exhibits in this matter will be as follows: Union exhibits, "Un. Ex. ____"; University exhibits, "Univ. Ex. ____"; Joint exhibits, "Jt. Ex. ____." References to the transcript of proceedings will be "Tr. ____."

dismissed on that basis, it is clearly inappropriate under the traditional community of interest factors set forth under Section 7(a) of the Act.

III. FINDINGS OF FACT

The parties stipulated and I find as follows:

1. At all times material, 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.
2. At all times material, UIC United Faculty, Local No. 6456, IFT-AFT, AFL-CIO, was a labor organization within the meaning of Section 2(c) of the Act.
3. On June 28, 2012, in UIC United Faculty, Local No. 6456, IFT-AFT, AFL-CIO/University of Illinois, Chicago, Case No. 2012-RC-0009-C, the Board certified the Union as the exclusive representative of a bargaining unit, commonly known as the "non-tenure track unit," of persons employed by the University, as follows:

Included: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) non-tenure track faculty who possess a terminal degree appropriate to the academic unit in which the faculty member is employed, and all full-time non-tenure track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms.

Excluded: All faculty members of the College of Pharmacy, the College of Medicine, and the College of Dentistry; all supervisory, managerial, and/or confidential employees as defined in Section 2 of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, *et seq.*

4. Since June 28, 2012, the University and the Union have negotiated three collective bargaining agreements (CBAs) for the non-tenure track bargaining unit. The first CBA's term was from 2012 to 2015, the second CBA's term was from 2015 to 2018, and the third CBA's term is from 2018 through 2022.
5. The non-tenure track bargaining unit currently has approximately 648 members.
6. On June 28, 2012, in UIC United Faculty, Local No. 6456, IFT-AFT, AFL-CIO/University of Illinois, Chicago, Case No. 2012-RC-0008-C, the Board certified the Union as the exclusive representative of a bargaining unit, commonly known as the "tenured and tenure-track unit," of persons employed by the University, as follows:

Included: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured or tenure-track faculty.

Excluded: All faculty members of the College of Pharmacy, the College of Medicine, and the College of Dentistry; all supervisory, managerial, and/or confidential employees as defined in Section 2 of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, *et seq.*

7. Since June 28, 2012, the University and the Union have negotiated three collective bargaining agreements for the tenured and tenure-track unit. The first CBA's term was from 2012 to 2015, the second CBA's term was from 2015 to 2018, and the third CBA's term is from 2018 through 2022.
8. The tenured and tenure-track bargaining unit currently has approximately 767 members.
9. The University currently employs approximately 17,162 full-time equivalent (FTE) employees.
10. Of the University's approximately 17,162 FTE employees, approximately 8,142 are represented in approximately 23 separate collective bargaining units.
11. The University currently employs approximately 271 individuals in the job title of postdoctoral research associate and fellow.
12. Postdoctoral research associates existed and were employed at the University's Chicago campus prior to 2012.
13. The University Statutes describe the educational policy, organization, and governance of the University System.

On the basis of the testimony of the witnesses, my observation of their demeanor, and the documentary evidence in the record, I make the following additional findings of fact:

At hire, the University offers the employees in the Union's non-tenured faculty unit a one-year employment contract, which sets forth the salary they will receive, which must be above the minimum in the non-tenure track unit's CBA, and benefits, such as health insurance, sick leave, and vacation, which are generally the same throughout the University's full-time workforce, including those in the tenured and tenure-track unit, those employed as postdoctoral research associates, and those employed in the Bridge to Faculty Program. Tr. 131-32, 143-44, 331-32. At the fourth year of consecutive University employment, the University offers the employees in the Union's non-tenured faculty unit at least a two-year employment contract, and at the sixth year of consecutive University employment, at least a three-year contract. Tr. 131-32, 310-11; Jt. Ex. B. There is no limit on the number of contract renewals employees in the Union's non-tenured faculty unit may receive, and the majority of such contracts are renewed at each cycle. Tr. 133, 324. During the terms of their contracts, non-tenured faculty may not be discharged other than for "just cause." Tr. 131-32; Jt. Ex. B. Other than the minimum salary set out in the non-tenure track and tenured and tenure-track units' CBAs, the University has no overall salary structure or schedule for such faculty, and accordingly, their salaries vary, sometimes widely, throughout the University's colleges and departments.² Tr. 154-56, 323.

As with their salaries, the duties and functions of the employees in the Union's non-tenured faculty unit vary widely, but some generalities exist. Tr. 154-55, 259. Ordinarily, the University expects all such employees

²The annual minimum salary set out in the CBA for the employees in the Union's non-tenured faculty unit is \$50,000. Tr. 323; Jt. Ex. B.

to engage in three broad academic functions: teaching, service, and scholarship. Tr. 123, 125. Teaching consists of the teaching of students, generally undergraduates. Tr. 124, 307, 309. "Service" is an umbrella term covering duties which broadly assist the University in some manner, such as serving on committees for various purposes like admissions, curriculum, or to provide advice on certain problems or questions facing the University or the departments or colleges within it. Tr. 124-25. Service includes holding elected office in, and participating in governance through, the faculty senate, and may also encompass work on editorial boards or review panels outside the confines of the University. Tr. 124-25, 126-27. "Scholarship" refers to research or the publishing of books or papers in the academic specialties in which the non-tenured faculty work. Tr. 125. Although the University expects all non-tenured employees to engage in teaching, service, and scholarship, not all do. Tr. 123-25, 219-21, 258-59, 263, 161. Although approximately 90 percent of all non-tenured faculty engage in teaching, some teach as many as six courses per academic year, while other teach as few as two during the same time period. Tr. 123-25, 306. Plainly, based on the above percentage, some sixty to seventy employees in the non-tenured unit do no teaching, and are instead engaged almost exclusively in research or other duties. Tr. 219-21, 258-59, 263, 161, 166. Additionally, certain of the non-tenured faculty engaged exclusively in research are recipients of grants which support their entire research program, including salaries for research assistants and necessary equipment. Tr. 141, 220-21. Some employees in the non-tenured unit spend a substantial amount of work time on service, while others devote a very low percentage of their time to such functions. Tr. 124-25, 221, 254-65, 309.

Employees in the non-tenured unit rarely move to tenured or tenure-track positions, and likewise, rarely do employees in the tenured or tenure-track unit move to non-tenured positions, however, occasionally, moves in both directions occur. Tr. 151-153, 163, 252, 304-305. Moving from a non-tenured position to a tenured or tenure-track position is generally more difficult, as the applicant must compete against other candidates for the position unless the hiring department has obtained a search waiver from the University's Office of Access and Equity, which in order to grant, first analyzes whether there is sufficient justification for the waiver of a competitive hiring process. Tr. 152-54. On a regular basis, employees in the non-tenured unit will have contact and interact with employees in their department or academic unit, which to varying degrees, include tenured or tenure-track employees, postdoctoral research associates, and bridge-to-faculty scholars. Tr. 224, 228-30, 260-61, 276-77, 306.

Postdoctoral research associates are University employees who hold doctoral degrees and are engaged in a temporary period of mentored research and/or scholarly training for the purpose of acquiring the professional skills necessary to pursue their career path. Tr. 64-65; Univ. Ex. G. Currently, the University employs approximately 238 postdoctoral research associates. Tr. 34, 51-53; Univ. Ex. H. Individual academic

units or departments hire postdoctoral research associates either by posting the vacant position, or at least as frequently, through eligible candidates seeking out such positions by contacting the department or academic unit. Tr. 39, 41-42, 50-51, 160, 273-74. Again, the University has no salary structure for postdoctoral research associates, so their pay is determined by the department or academic unit which hires them, but in no case, may such salaries be less than \$36,219. Tr. 51, 67. Almost all the University's postdoctoral research associates work on twelve-month contracts, meaning they are obligated to the University year-round. Tr. 45, 145, 300-303, 315-17, 331. The postdoctoral research associates are unrepresented for purposes of collective bargaining. Tr. 50-51. As noted above, postdoctoral research associates are entitled to University benefits, such as health insurance, sick leave, and vacation, which are generally the same throughout the University's full-time workforce. Tr. 44-45, 53-54, 331; Univ. Ex. I.

Persons employed by the University as postdoctoral research associates may only occupy the title for the five years following the award of the doctoral degree. Tr. 49-50, 328; Univ. Ex. J. Following the end of the five year term in the postdoctoral research associate title, most such employees leave the University for positions in the public or private sector. Tr. 64-65, 73-74. Some remain at the University, but transition into similar positions such as research assistant professor, which is in the Union's non-tenured faculty unit. Tr. 64-65, 73-74. Postdoctoral research associates primarily have contact and interact with employees in their department or academic unit, which to varying degrees, include non-tenure track employees, tenured or tenure-track employees, and bridge-to-faculty scholars. Tr. 97-99. University departments and academic units almost always hire postdoctoral research associates to assist faculty members in the research they are directing, and the funding for the postdoctoral research associates' salaries comes from the research grants held by those faculty members, as a result, such employees generally do not engage in the academic functions of teaching or service. Tr. 81-84, 160.

The University's Bridge to Faculty initiative "is a recruitment program designed to attract underrepresented postdoctoral scholars with the goal of a direct transition to a tenure-track junior faculty position after two years." Tr. 171-73, 233; Univ. Ex. M at p. 847. The University began the program in or about August 2020. Tr. 172. Through this program, the University seeks to recruit highly qualified, underrepresented candidates to prepare them during the two year cycle, for careers on the University's faculty, with the goal of making it more diverse and accomplished. Tr. 171, 233; Univ. Ex. M. Most recruits to the Bridge to Faculty program have doctoral degrees, no differently than the University's postdoctoral research associates, and the remainder have terminal degrees in their fields, usually masters degrees. Tr. 171-72. Because not all the Bridge to Faculty recruits have doctoral degrees, the University refers to them as "Bridge to Faculty scholars." Tr. 171-72. The salaries of the scholars and the other costs of the program are funded by the

University's Chancellor's Office and administered through its Office of the Vice Chancellor's Office for Diversity, Equity, and Engagement. Tr. 215, 232; Univ. Ex. M.

The hiring process for the Bridge to Faculty scholars is similar to the type of national competitive search conducted to fill vacant faculty positions. Tr. 183, 273-74, 294-95. The process begins with the Bridge to Faculty program notifying the University's departments and academic units they may apply to host a Bridge to Faculty scholar. Tr. 181. The departments and units complete applications, explaining, among other topics, what the department or unit's interest is in hosting a scholar, the duties and responsibilities expected of a scholar, the plans for mentoring the scholar, and the plans for transitioning the scholar to a tenure-track position. Tr. 181-82. The University gathers a committee of faculty to review and rank the applications. Tr. 182. The University provost, chancellor, and others review the list of applicants, as ranked by the committee, and thereafter notifies the successful departments and units. Tr. 182. As noted above, those departments or units then conduct a search for candidates in a manner similar to that used to fill vacant faculty positions. Tr. 182-83. Once departments or units hire scholars, the Bridge to Faculty program administrators will monitor the progress of the scholars and ensure the department or unit is adequately supporting, mentoring, and assisting them so that in two years, the scholars have developed to a point where they can successfully transition to tenure-track positions. Tr. 172, 183-84, 188. There is no guarantee Bridge to Faculty scholars will receive tenure-track offers from the University, although, to date, apparently all have successfully transitioned. Tr. 187-88. During the time the Bridge to Faculty scholars are in the program, the University gives them nine-month contracts (paid over twelve months), which mean for nine months, August 16 to May 15, they are obligated to the University, and are free to pursue research and/or prepare for the next academic year during the remaining three months of the year. Tr. 145, 235-236, 249-50, 295, 300, 302-303, 315, 331. Throughout the existence of the program, the University has not hired a Bridge to Faculty scholar at an annual salary of less than \$50,000. Tr. 323, 336. As noted above, Bridge to Faculty scholars are entitled to University benefits, such as health insurance, sick leave, and vacation, which are generally the same throughout the University's full-time workforce. Tr. 331-32.

During their two years in the program, Bridge to Faculty scholars primarily engage in the academic functions of teaching and scholarship. Tr. 193, 203, 296. Bridge to Faculty scholars generally teach one class per year, and focus most of their work time on developing their unique area of research so that by the time they transition to tenure-track faculty positions, their research is established, allowing them to focus on other aspects of their new positions. Tr. 193, 212, 254, 274-75, 296. Bridge to Faculty scholars do not have a requirement to participate in service, other than to engage with their department or academic unit and to attend departmental or unit meetings. Tr. 193, 241-42, 243-44, 267-68, 279-80. Bridge to Faculty scholars primarily have contact and interact with employees in their department or academic units, which to varying degrees, include non-tenure

track employees, tenured or tenure-track employees, and postdoctoral research associates. Tr. 250, 267-68, 277, 298-99.

IV. DISCUSSION AND ANALYSIS

Herein, the Union seeks to represent the approximately 29 Bridge to Faculty scholars employed by the University, in its current bargaining unit of full-time non-tenure track faculty members. The University opposes the Union's petition, asserting under Section 1135.20(b) of the Rules, the resulting bargaining unit is inappropriate. Section 1135.20(b) of the Rules sets forth presumptively appropriate bargaining units specific to the University's Chicago campus. However, in Graduate Employees Organization, Local 6297, IFT-AFT, AFL-CIO/University of Illinois, Chicago, 2021 IL ELRB LEXIS 42, 38 PERI ¶31, Case No. 2021-RS-0015-C (IELRB, 2021), the Board held Section 1135.20(b) of the Rules does not apply to petitions which do not seek to establish a new bargaining unit. 2021 IL ELRB LEXIS 42 at pp. 3-4. As the instant petition seeks to add employees to an existing unit, it need only be appropriate under Section 7 of the Act. 2021 IL ELRB LEXIS 42 at p. 4.

Section 7(a) of the Act provides the following with regard to determining whether a petitioned-for unit is appropriate:

In determining the appropriateness of a unit, the Board shall decide in each case, in order to ensure employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purpose of collective bargaining, based upon 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 University asserts the Union's petition, seeking to add the Bridge to Faculty scholars to its bargaining unit of full-time non-tenure track faculty members, is likewise inappropriate under Section 7(a), suggesting the Bridge to Faculty scholars have more in common with the University's postdoctoral research associates.

Most of the factors listed in Section 7(a)—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—do not strongly favor either the unit proposed by the Union or a unit combining the Bridge to Faculty scholars with the University's postdoctoral research associates. In other words, within each of these units, there exists a valid community of interest, functional integration, interchangeability and contact among employees. Likewise, as noted above, within their departments or academic units, they all have common supervision, hours, and other working conditions. However, the starting and overall salaries for the Bridge to Faculty scholars and the full-time non-tenure track faculty members are generally far higher than those of the University's postdoctoral research

associates. The "historical pattern of recognition" favors neither placement, as the Bridge to Faculty scholars and the postdoctoral research associates are unrepresented, and have never been represented for purposes of collective bargaining. The "desires of the employees" factor tends to favor the unit proposed by the Union, as there is evidence of employee support for it through the majority interest process.

As a result, the petitioned-for unit is only slightly more appropriate for collective bargaining than placement with the postdoctoral research associates. The Act does not mandate, however, the petitioned-for unit must by a substantial margin, be the most appropriate unit, only that it be an appropriate unit Sandburg Faculty Association, IEA-NEA v. Illinois Educational Labor Relations Board, 248 Ill. App. 3d 1028, 1036, 618 N.E.2d 989, 995, 144 LRRM 2543 (1st Dist. 1993). The Board noted likewise in Downers Grove Education Association, IEA-NEA/Downers Grove Community High School District No. 99, 1 PERI ¶1105 at VII-207 (IL ELRB 1985):

Although the employee groups petitioned for here arguably might be included in a more comprehensive bargaining unit, we are not compelled to determine whether a unit not petitioned-for is possibly more appropriate, but need only to determine whether the unit actually petitioned for meets at least the minimum standards necessary for appropriateness. An important statutory purpose in bargaining unit determinations is to ensure employees the fullest freedom in exercising the rights guaranteed by this Act. To refuse to find a unit appropriate because of the possible existence of a more appropriate alternative unit would not serve that statutory purposes.

Thus, the question is not whether there is a more appropriate placement for the employees petitioned-for herein, but rather, whether adding the petitioned-for employees to the existing unit is appropriate. Based on consideration of the 7(a) factors above, the placement is appropriate.

V. CONCLUSIONS OF LAW

The bargaining unit as petitioned for herein by the Union is appropriate for purposes of collective bargaining, within the meaning of Section 7(a) of the Act.

VI. ORDER

Unless this order is rejected or modified by the Board, the instant petition shall be remanded to the executive director for processing in accordance with Section 1110.105 of the Board's Rules.

VII. 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 hereof. 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, at ELRB.mail@illinois.gov and 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 Section 1100.20 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.

Issued in Chicago, Illinois, this 19th day of May, 2022.

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

/s/ John F. Brosnan

**John F. Brosnan
Administrative Law Judge**