STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Board of Trustees of the University of Illinois, Employer	)	
and	)	Case No. 2025-RC-0010-C
Service Employees Int'l Union, Local 73, Petitioner	)	

OPINION AND ORDER

I. Statement of the Case

On December 3, 2024, Service Employees International Union, Local 73, SOC-CLC (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 represent Advanced Practice Providers[1] employed by the Board of Trustees of the University of Illinois (University or Employer or Respondent) at the University of Illinois Hospital and Health Sciences System at its Chicago campus (UI Health).[2] Advanced Practice Providers (APP) refers to Physician Assistants[3] and Advanced Practice Registered Nurses (APRN). APRN includes the titles of Certified Nurse Practitioner, Certified Nurse Midwife, Certified Clinical Nurse Specialist, and Certified Registered Nurse Anesthetist.[4] There are approximately 228 persons employed in the petitioned-for titles. The University objected to the petition based on its contention that the petitioned-for unit is inappropriate under the presumptively appropriate bargaining unit in Section 1135.20(b)(6) of the Board's Rules and Regulations and that it does not meet the standard for deviation from those units. The parties

[1] The petition excludes Advanced Practice Providers known as academic hourly or serving in the managerial capacity.

[2] The parties jointly waived the 120-day time limit in Section 7 of the Act for the Board to ascertain the employees' choice of representative or, if a hearing is necessary, to resolve any issues of representation. The waiver extended the time period until July 31, 2025.

[3] The petition excludes Physician Assistants working in the anesthesiology department.

[4] The petition excludes APRNs who are Certified Registered Nurse Anesthetists

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 timely exceptions to the ALJRDO, and the Union filed a timely response to the exceptions.[5]

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

In determining whether a bargaining unit is appropriate, we are 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 by this Act." The Board has recognized that more than one appropriate bargaining unit may cover the same employees and has 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). The Act does not require that a petitioned-for unit be the most appropriate unit, but rather an appropriate unit. *Board of Trustees of the University of Illinois v. Illinois Educational Labor Relations Board*, 2015 IL App (4th) 140557, ¶40; *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

[5] The parties requested and were granted an extension of time to file their exceptions and response.

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). The IELRB may also consider whether the employees in the petitioned-for unit share such an intense community of interest with another group of employees as to render the petitioned-for unit inappropriate. *School District U-46*, 13 PERI 1071, Case No. 97-RC-0009-C (IELRB Opinion and Order, May 16, 1997); *Thornton Township High School Dist. No. 205*, 2 PERI 1103, Case No. 85-UC-0008-C (IELRB Opinion and Order, August 20, 1986). This consideration is for the purpose of prohibiting bargaining units which are arbitrary and artificial and whose parameters are determined solely by the extent of organization. *School District U-46*, 13 PERI 1071.

Presumptively appropriate bargaining units specific to the University of Illinois are set forth in Part 1135 of the IELRB's Rules and Regulations. 80 Ill. Adm. Code 1135.10-1135.30 (U of I Rules). "Presumptively appropriate means that a bargaining unit has been found to have the requisite community of interest under Section 7(a)" of the IELRA. 80 Ill. Adm. Code 1135.10. The presumptively appropriate bargaining units of educational employees employed at the Employer's Chicago campus are listed in Section 1135.20(b) of the of the U of I Rules, including a unit of "All full-time non-visiting academic professionals exempted as Principal Administrative Employees from Section 36e of the State Universities Civil Service Act who have .50 or greater appointment in that position."

The University employs approximately 2,702 non-visiting academic professionals (AP) at its Chicago campus working in over 50 organizational units. Over 433 APs work within UI Health in a variety of job titles. The classification of APP is one of them. Not all APs are APPs, but all APPs are APs. In this case, the petitioned-for unit is does not include all APs, just the APs who are APPs.

This means that the petitioned-for bargaining unit does not fit within the presumptively appropriate bargaining unit for APs in Section 1135.20(b). Section 1135.30(a) of the Rules allows the Board to certify petitioned-for bargaining units comprised of educational employees of the University other than those set forth in Section 1135.20 only if the petitioner can show 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.

"Clear and convincing" evidence is "the quantum of proof that leaves no reasonable doubt in the mind of the fact finder as to the truth of the proposition in question…more than a preponderance while not quite approaching the degree of proof necessary to convict a person of a criminal offense." *University of Illinois at Urbana-Champaign*, 29 PERI 67, Case No. 2012-RS-0009-S (IELRB Opinion and Order, September 24, 2012) (quoting *Bazydlo v. Volant*, 164 Ill. 2d 207, 647 N.E.2d 273 (1995); *People v. Williams*, 143 Ill. 2d 477, 577 N.E.2d 762 (1991)). Here, the question is whether the Petitioner has established by clear and convincing evidence that the petitioned-for unit is an appropriate unit for purposes of collective bargaining.

A. Unit Appropriateness Under Section 7 of the Act

The first question is whether the petitioned-for unit is otherwise appropriate under Section 7 of the Act. Pursuant to Section 7(a) of the Act, the Board considers the following community of interest factors in order 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.

The University argues in its exceptions that the ALJ erroneously found that the APPs share similar skills and functions because they all treat patients. While it is true that the ALJ found that the APPs' common skill and function is treating patients, the ALJ also considered their common educational backgrounds, licenses and certifications. The University also complains that the excluded Certified Registered Nurse Anesthetists (CRNA) share some of these same skills and functions. That may be true, but the question is the community of interest between the employees in the petitioned-for unit, not the employees in the petitioned-for unit and another group of employees outside of the sought after unit. Moreover, whatever community of interest factors the petitioned-for employees may share with employees outside of the petitioned-for unit do not render the petitioned for unit inappropriate. That is because it is not whether a unit is the most appropriate unit, its whether it is an appropriate unit. *University of Illinois.*, 2015 IL App (4th) 140557, ¶40; *Black Hawk College Professional Technical Unit*, 275 Ill. App. 3d 189, 655 N.E.2d 1054; *University of Illinois*, 7 PERI 1103. The general skills and functions of the APPs to one another are similar, as they all have the primary responsibility to treat patients. The general skills and functions are similar, and, thus, are functionally integrated. *Chicago Board of Education*, 18 PERI 1158, Case No. 2002-RS-0008-C (IELRB Opinion and Order, October 17, 2002). The University observes in its exceptions that the APPs are not interchangeable because the different titles within the APP classification require different State licenses and credentials and as a result, APPs cannot perform each other's duties. Employees in different titles or positions are unlikely to be completely interchangeable. However, there is some interchangeability between some of the petitioned-for positions. The record indicates that a job opening at UI Health's Mile Square could be filled by either an APRN or a Physician Assistant, a Physician Assistant possessing some expertise in nephrology could step into the role of an APRN working in the nephrology department. There is

some degree of contact between APPs, as some of them share a common workplace and work together within the same department. Yet the ALJ found that the amount of contact was not common and consistent enough to weigh in favor of a finding of a community of interest. The University does not argue with this finding. We leave it undisturbed. Even without contact, the ALJ determined that the degree of interchangeability between the APPs weighed in favor of finding a community of interest. We agree.

The ALJ found that the APPs share a common supervisor, Sisay Mersha (Mersha). The University asserts in its exceptions that the ALJ erred and that the supervisor that should count for this community of interest factor should be the direct supervision at the department level. The ALJ took a broad view, noting that the APPs' direct supervision arises from the department level. The petition includes APPs in differing departments. As it effects the broader working conditions and goals of the APP program, the APPs were all supervised by Mersha. Although not all APPs report to the same direct supervisor, the element of common supervision by Mersha weighs in favor of a finding of community of interest between the APPs.

The wages, hours and working conditions of the APPs favor finding a community of interest. The University contends in its exceptions that the shared wages, hours and working conditions among the petitioned-for APPs are also shared with the excluded CRNAs. However, CRNAs' wages are substantially higher than the petitioned-for APPs. CRNAs' salaries range between $240,000 and $277,000 with an $18,000 signing bonus. In contrast, the petitioned-for APPs' salaries range from $119,000 to $150,000.

Finally, the desires of the employees are an important consideration because the goal in determining the appropriateness of a bargaining unit is to ensure employees the fullest freedom in exercising the rights guaranteed them by the Act for the purpose of collective bargaining. 115 ILCS 5/7(a); *Black Hawk College*, 275 Ill. App. 3d 189, 655 N.E.2d 1054. The majority interest petition in this matter is accompanied by the required showing of interest from a majority of the petitioned-

for unit. Thus, the desire of a majority of the petitioned-for APPs is to be in the bargaining unit. The University's argument that the IELRB should consider the desires of employees outside of petitioned-for unit has no merit because the desires of those employees are not among the criteria which must be considered by the IELRB in determining the appropriate unit.

For the reasons discussed above, we affirm the ALJ's determination that there is a sufficient community of interest between the petitioned-for employees pursuant to Section 7(a) of the Act to constitute an appropriate bargaining unit. Accordingly, we find that there is clear and convincing evidence that the petitioned-for unit is otherwise appropriate under Section 7 of the Act.

B. Special Circumstances and Compelling Justifications

The next question is whether special circumstances and compelling justifications make it appropriate for the Board to establish a unit different from those set forth in Section 1135.20.

The University argues in its exceptions that this case is similar to *Board of Trustees, Univ. of Illinois at Chicago*, 12 PERI 1073, Case No. 95-RC-0011-C (IELRB Opinion and Order, August 19, 1996), where the Board rejected a union's petition to represent a group of University employees that was not one of the presumptively appropriate units set forth in the U of I Rules. The union in that case did not meet the special circumstances and compelling justifications, or any of the other requirements in Section 1135.30(a), that allow the Board to certify a unit of University employees that does not fit within one of the presumptively appropriate units in the U of I Rules. In determining that there were no special circumstances and compelling justifications, the Board noted that the petitioned-for unit would not be appropriate even absent the U of I Rules. *Id.* As the ALJ correctly observed, that case is distinguishable from this one, where the Union has shown by clear and convincing evidence that the petitioned-for unit is appropriate under Section 7 of the Act. The University's contention that the fact pattern in *Univ. of Illinois*, 12 PERI 1073, is "essentially the same as the one here" is inaccurate. Under the facts of this case, there is a sufficient

community of interest between the petitioned-for employees, whereas there was not in the unit sought in *Univ. of Illinois*.

The broad AP category is a catch-all for University employees not within the civil service system or faculty. The distinctive nature of the APPs compared to the broader AP category is a special circumstance that makes it appropriate for the Board to establish a unit outside of the presumptively appropriate U of I units. APs who are not APPs work in the School of Law, Liberal Arts and Sciences, College of Education, College of Medicine, the Graduate Colleges, various administrative departments, and Intercollegiate Athletics. Most of the APs who are not APPs do not work with patients and are not required to hold the same or even similar degrees, licenses or certifications as the APPs. In contrast, the APPs are a specific subset of employees that share the same or comparable duties and are required to have the same or similar educational background, training, licenses and certifications. These qualities set the APPs apart from other APs.

An additional factor supporting a finding of special circumstances and compelling justifications is that the only petition that has been filed seeking representation for APPs is the one at issue in this case. 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. 2011-RS-0018-C (IELRB Opinion and Order, May 24, 2012); *University of Illinois*, 21 PERI 119; *University of Illinois*, 6 PERI 1126, Case No. 89-RS-0012-C *et al.* (IELRB Opinion and Order, March 8, 1990). Likewise, we find that there is clear and convincing evidence that special circumstances and compelling justifications make it appropriate to establish a unit in this case that is different from the presumptively appropriate units.

C. No Undue Fragmentation or Proliferation of Bargaining Units

The third issue is whether the establishment of a different unit will cause undue fragmentation or proliferation of bargaining units. That is, whether establishing a unit outside the presumptively appropriate units would threaten to interrupt services, cause labor instability, and cause continual collective bargaining and a multitude of representation proceedings. Here, certifying the petitioned-for unit would not threaten to interrupt services. A bargaining unit of all APs as described in the U of I Rules would have the potential to interrupt services of the University across the board more than the petitioned-for unit. The APPs only provide service at U of I Health, whereas APs work in over 50 of the University's organizational units. Similarly, it would not cause labor instability. The APs who are not included in the petitioned-for unit are not part of a bargaining unit, nor has there been a petition filed seeking to represent those employees. As a result, we need not address whether certifying the petitioned-for unit would cause continual collective bargaining or a multitude of representation proceedings. We find that there is clear and convincing evidence that establishment of the petitioned-for unit will not cause undue fragmentation or proliferation of bargaining units. Thus, all the requirements in Section 1135.30(a) for establishing a bargaining unit other than the presumptively appropriate units set forth in Section 1135.20 have been met.

IV. Order

The petitioned-for bargaining unit satisfies the requirements in 80 Ill. Admin. Code 1135.30(a) for approving bargaining units other than the presumptively appropriate units. The ALJRDO is affirmed in its entirety. 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 16, 2025**
Issued: **July 16, 2025**

/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

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STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Board of Trustees of the University of Illinois,	)	
	)	
Employer,	)	
	)	
and	)	Case No. 2025-RC-0010-C
	)	
Service Employees International Union, Local 73,	)	
	)	
Petitioner.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On December 3, 2024, Service Employees International Union, Local 73, SOC-CLC (Union or Petitioner) filed a petition for certification (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 (Rules), 80 Ill. Admin. Code § 1110.50. The Union's majority interest petition sought to become the exclusive bargaining representative of a group of unrepresented employees for the purpose of collective bargaining with the employer, the Board of Trustees of the University of Illinois (University or Employer). The University objected to the instant petition on December 26, 2024, arguing that the proposed unit is not presumptively appropriate for collective bargaining under the Board's Rules and that there is not clear and convincing evidence showing satisfaction of the required factors set forth in Section 1135.30(a) of the Board's Rules. 80 Ill. Admin. Code § 1135.20, 1135.30(a). In light of these issues, a hearing was conducted, beginning on February 19, 2025 and concluding on February 21, 2025. 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.[1]

I. ISSUES AND CONTENTIONS

The Union petitions to form a bargaining unit made up of Advanced Practice Providers employed by the University at the University of Illinois Hospital and Health Sciences System at its Chicago campus. The term Advanced Practice Provider refers to Physician Assistants and Advanced Practice Registered Nurses, which includes the following job titles: Certified Nurse Practitioners, Certified Nurse Midwifes, Certified Clinical Nurse Specialists, and Certified Registered Nurse Anesthetists. The petitioned-for unit excludes Certified Registered Nurse Anesthetists, Physician Assistants working in the anesthesiology department, and Advanced Practice Providers known as academic hourly or serving in a managerial capacity.[2] The University objects on the grounds that the petitioned-for bargaining unit does not match the presumptively appropriate unit set forth in Section

[1] Post-hearing briefs were filed by the parties on April 8, 2025.
[2] The Union orally clarified the petitioned-for bargaining unit at hearing on February 21, 2025.

1135.20(b)(6) of the Rules and that the Union cannot and does not show that the petitioned-for unit meets the standard for deviation from the presumptively appropriate bargaining units set forth in Section 1135.30(a) of the Rules. The Union contends that it shows by clear and convincing evidence that the petitioned-for unit satisfies the three elements necessary to deviate from the presumptively appropriate bargaining unit.

II. FACTS

The University is an educational employer within the meaning of Section 2(a) of the Act. 115 ILCS 5/2(a). The Union is a labor organization within the meaning of Section 2(c) of the Act. 115 ILCS 5/2(c). The employees that the Union petitions to represent are educational employees within the meaning of Section 2(b) of the Act. 115 ILCS 5/2(b).

At hearing, the Union and the University submitted numerous exhibits, which were admitted into the record.[3] In addition to the exhibits, each party presented testimony. During the hearing, the Union supported its case with testimony from Sisay Mersha, DNP, PhD, ACNP-BC (Mersha), Sarah Ehrhardt, PA-C (Ehrhardt), Justin Kapelinski, MSN, APRN, AGACNP-BC (Kapelinski), Roderick Martinez, APRN, CNP (Martinez), and Jordan Parshall (Parshall). The University supported its case with testimony from Mersha, R. Theodore Clark, Jr. (Clark)[4], Jamie Painter (Painter)[5], Cheri Canfield (Canfield)[6], and Nicholas Haubach (Haubach).[7]

Based on the testimony of the witnesses and the documentary evidence in the record, I make the following additional findings of fact:

a. Categorization of Academic Professionals in the University of Illinois System

The University classifies employees exempted from the State Universities Civil Service System as Academic Professionals (AP).[8], [9] Tr. 462, 465. All APs employed by the University possess at least a bachelor's degree, with many AP positions requiring higher degrees, such as a master's degree or a doctoral degree. Tr. 468. The University appoints all APs to a 12-month appointment following the course of an academic year.[10] TR. 469. An AP appointed mid-year receives a partial appointment through the end of the current academic year. *Id.* At the end of an academic year, the University will either renew the appointment or notify the AP of non-reappointment. Tr. 473-74. Depending on the individual AP's length of employment and funding type, the University provides advance notice of non-

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[3] References to exhibits in this matter will be as follows: Petitioner's exhibits, "P. Ex."; Employer's exhibits, "E. Ex.". References to the transcript of proceeding will be "Tr.".

[4] Clark is a senior partner at the law firm, Clark Baird Smith LLP.

[5] Painter is the Senior Associate Vice President and Chief Human Resources Officer for the University of Illinois System. Tr. 459-60.

[6] Canfield is the Assistant Vice Chancellor for Human Resources at UIC. Tr. 552-553.

[7] Haubach is the Chief Administrative Officer at UI Health. Tr. 633.

[8] Section 36e of the State Universities Civil Service Act exempts, among other positions, those employees deemed "other principal administrative employees of each institution and agency." 110 ILCS 70/36e. The University classifies those employees qualifying for this principal administrative employee exemption as academic professionals. Tr. 465.

[9] The University and the Rules differentiate between "visiting" and "non-visiting" APs. Because the underlying petition solely addresses a subset of "non-visiting" APs, this Recommended Decision and Order will not address any shared characteristics between "visiting" and "non-visiting" APs.

[10] Upon hiring, all APs receive a notification of appointment that denotes their job title, unit, salary, and expected work hours. Tr.469-73; E. Ex. 5.

reappointment ranging between two months and one year. Tr. 474; P. Ex. 2 at 7, 31. The University pays APs on a monthly basis.[11] Tr. 481, 483. Across all three campuses, APs receive the same benefits package. Tr. 488. Unlike employees categorized as faculty or civil service, an AP lacks any formal promotional pathway. Tr. 479-80. An AP's department or unit determines promotional opportunities, if any. Tr. 479.

b. Academic Professionals at the University of Illinois-Chicago Campus

The University employs about 2,702 APs across 51 organizational units at the University's Chicago campus (UIC).[12] E. Ex. 9. These units include colleges, such as the School of Law, Liberal Arts and Sciences, Education, College of Medicine, and the Graduate Colleges; administrative departments, such as the Chancellor, Provost, and Utilities; and other units such as Intercollegiate Athletics and the Healthcare Systems. *Id.* Of the 2,702 APs employed at UIC, about 433 non-visiting APs work within the University of Illinois Hospital and Health Sciences System (UI Health) at its physical locations. E. Ex. 14; Tr. 642.

UI Health encompasses the hospital, three outpatient clinics, seven Health Sciences Colleges, and eleven community health centers. Tr. 635-37. The hospital and one of the outpatient clinics are located at UIC on the west campus, known as the UI Health campus. Tr. 636-37. The two other outpatient clinics are in Chicago: one clinic in University Village, on the east campus; and one clinic southwest of the campus. *Id*; Tr. 177. The community health centers, known as the Mile Square Health Clinics (Mile Square), are located across Chicago, with one location in Rockford. Tr. 637. Some departments, such as the transplant department, operate outposts at hospitals in Chicago and Rockford to serve patients beyond the immediate vicinity of UI Health. Tr. 218.

All applicants to an AP position at UIC undergo the same hiring process. A unit or department with a vacancy generates a job description. Tr. 563-64. A human resources team evaluates that job description to determine whether it belongs within the Civil Service System or within the AP category. *Id.* Once the team determines the job's category, the unit generates an advertisement, at which point, another team reviews before the unit may publicly post the advertisement. Tr. 564. The unit's search committee and search coordinator review applications and set up interviews with applicants. Tr. 89, 565. The unit makes the final hiring determination, but any salary negotiation occurs with human resources.[13] Tr. 88-89,183-184, 565. Salaries for APs vary depending on the position. *See e.g.* P. Ex. 14, 15. The minimum salary for an AP begins at $43,888. E. Ex. 10a. Annual salary increases are determined by the University President, in an annual allocated merit pay increase percentage announcement. E. Ex. 10, 10a. An AP's unit maintains discretion over raises. Tr. 577, 615-16.

All three of the University's campuses maintain an academic professional advisory council (APAC), at which APs, elected by their peers, provide advice and recommendations to the campus Chancellor. Tr. 489-90; E. Ex. 7. UIC's APAC put forth one recommendation that the University plans to implement. Tr. 619-20. This council also

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[11] APs are exempt from the Fair Labor Standards Act's overtime requirements. Tr. 481.

[12] Approximately 130 APs at UIC work for the University system rather than any units at UIC. E. Ex. 9.

[13] Testimony at the hearing varied on with whom an applicant negotiated a starting salary. *See* Tr. 231-32, 263-64. 565. However, the documentary evidence when connected with most testimony shows that the human resources department has some involvement with salary negotiations.

provides an avenue for processing grievances regarding violations of University processes or policies. *Id.* However, the grievance process appears rarely used by APs at UIC.[14] Tr. 618.

There are no "non-visiting" APs represented by a union at UIC or at the Champaign-Urbana campus.[15],[16] Tr. 501,518-19, 624. At UIC, there are 25 bargaining units, encompassing approximately 6,900 of the 8,900 civil service employees. E. Ex. 21; Tr. 623. Seven of these bargaining units represent employees from UI Health. Tr. 643. Since 2012, these bargaining units went on strike six times. Tr. 645. On average, negotiations for a collective bargaining agreement lasts between nine months to one year. Tr. 591, 620.

c. Advanced Practice Providers at UI Health

At UI Health, APs fill a variety of job titles, including the titles of advanced practice registered nurse (APRN) and physician assistant. E. Ex. 14; Tr. 658. The physician assistants and APRNs fall under the classification of Advanced Practice Provider (APP).[17] Tr. 24. APRNs at UI Health include Certified Nurse Practitioners (CNP), Certified Nurse Midwifes (CNM), Certified Clinical Nurse Specialists (CCNS), and Certified Registered Nurse Anesthetists (CRNA). Tr. 25. APPs are practitioners with prescriptive treatment authority. E. Ex. 15. Beyond qualifications, the main differences between an APP and a physician, the other practitioner defined in UI Health's bylaws, is that an APP cannot admit a patient under the APP's name and that an APP cannot qualify for Medical Staff Membership. Tr. 304-05; E. Ex. 15. APPs at UI Health receive a "courtesy" faculty appointment at one of the Colleges of Health Sciences. Tr. 106. APRNs are appointed at the College of Nursing, and physician assistants are appointed at the College of Medicine. Tr. 107-08.

Mersha, the Senior Director of Advanced Practice Providers, supervises the APPs. Tr. 4; P. Ex. 3. As the Senior Director of Advanced Practice Providers, Mersha oversees the APPs across the entire UI Health system; his duties include setting the orientation for new APPs at UI Health. Tr, 291-92; P. Ex. 1-3. Decisions regarding and direction for the APPs flow through him. *Id.* Because the APPs work in a range of different departments, their direct supervision and reporting structure varies. For example, Martinez, an APRN on the rapid response team, reports to Mersha and Melissa Duckett. Tr. 259. Erhardt, a physician assistant in the gastroenterology department, reports to Melani Aleaya, Melissa Fredericks, and Dr. E.C. Multu. Tr. 195-96. Kapelinski, an APRN in the nephrology department and transplant department, reports to Dr. Zara Hajiri, Lorenzo Gallant, and Dr. James Lash. Tr. 216-17.

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[14] Canfield testified that she could not recall UIC's APAC advancing any grievances to her as Assistant Vice Chancellor for HR. Tr. 618-19. She did recall one grievance brought by an individual AP to the human resources department regarding an ethics issue. Tr. 628-29.

[15] A unit of "visiting" APs organized at the Champaign-Urbana campus. Tr. 545; *Association of Academic Professionals, IEA-NEA and Board of Trustees of the University of Illinois*, 21 PERI 119 (IELRB, July 15, 2005) (affirmed ALJ recommendation of election for visiting academic professionals).

[16] The parties did not offer testimony regarding the unionization of APs at the Springfield campus; however, from a review of the 14 bargaining units at the Springfield campus, I find it more likely than not that no APs at the Springfield campus are represented by a union.

[17] Advanced Practice Provider is a generic term widely used at medical facilities nationwide, including UI Health, to refer to Advanced Practice Registered Nurses and Physician Assistants. Tr. 314.

The University employs about 59 APPs across the 11 Mile Square locations.[18] E. Ex. 20a. It employs 230 APPs at the hospital or at one of the three outpatient clinics.[19] E. Ex. 20. Of those 287 APPs, the Union seeks to form a bargaining unit of 245 APPs that excludes the 40 CRNAs and 4 physician assistants in the anesthesiology department. The APPs are employed by their hiring organizational unit, which could be either the hospital, the College of Medicine, the College of Nursing, Mile Square, or the College of Dentistry. Tr. 317-18. An APP's salary derives from the budget of the hiring unit. Tr. 318. This salary can be shared by two or more units. Tr. 317.

With some exception, an APP handles patient treatment, a duty which encompasses seeing a patient, assessing the patient's needs, determining a care plan, and implementing the treatment plan. Tr. 29; *see e.g.* P. Ex. 9, 12, 13, 14, 15, 18, 19. Most patient-treating APPs follow a similarly structured schedule, with each day divided into two blocks, resulting in ten blocks per week. Tr. 224-25, 334. Other APPs treat patients on an emergency basis.[20] Tr. 258-59. Vacation requests vary based on the department. Tr. 210-11, 236, 271, 362-63. APPs engaged in direct patient treatment must provide between eight weeks and three months' notice for a vacation request.[21] Tr. 210-11, 236-37. Other APPs need only provide two weeks' notice.[22] Tr. 271. Some departments require an APP to provide six weeks' notice for sick leave, others do not require any notice.[23] Tr. 210-11, 236, 361-63.

APPs perform these activities based on a written collaboration agreement with a supervising physician; however, an APRN may obtain Full Practice Authority (FPA), a license issued by the state of Illinois, after working 4,000 clinical hours under the supervision of a physician and earning 250 continuing education credits.[24] Tr. 28-29. Once an APRN obtains FPA licensure, he or she may treat patients independently of a supervising or collaborating physician. Tr. 29-30; 225 ILCS 66/65-43(b). About 20 percent of APRNs at UI Health obtained an FPA. Tr. 382. All APRNs and physician assistants must be licensed to prescribe medications, through a DEA license and an Illinois controlled substance license. P. Ex. 14, 18, 19.

Certified Nurse Practitioner

A CNP may serve in a variety of departments, such as pediatrics, psychiatry, and family medicine, depending on the CNP's specialization. Tr. 51. The University employs about 146 CNPs at the hospital and about 37 CNPs at the Mile Square locations. E. Ex. 20. A CNP must possess a bachelor's degree in nursing or qualification as a nurse and a master's or doctorate in nursing. Tr. 52. A CNP must then pass a board exam to obtain board certification in

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[18] The University employs 61 APPs at Mile Square. E. Ex. 20, 20a. Two of the Mile Square APPs were marked as managerial and not sought for representation by the Union. *Id*; Tr. 344, 548-49.

[19] The University employs 258 APPs at the hospital and outpatient clinics. E. Ex. 20. 28 of those APPs were marked as either managerial or hourly and not within the petitioned-for unit. *Id*; Tr. 337-40.

[20] Martinez testified that, in his role on the rapid response, he primarily responds to emergency medical situations on the UI Health campus and does not see patients on a regular schedule. Tr. 258-59, 279.

[21] Erhardt testified that she must provide three months' notice before a vacation in the gastroenterology department. Tr. 210-11. Kapelinski testified that he must provide eight weeks' notice in the nephrology department. Tr. 236-37.

[22] Martinez testified that his department preferred at least two weeks' notice for a vacation request. Tr. 271.

[23] Ehrhardt testified that she must provide six weeks' notice for any elective sick leave. Tr. 210-11. Kapelinski testified that he did not recall any instance of him needing to provide notice for sick leave but recalled that some co-workers provided notice for scheduled procedures. Tr. 236.

[24] Illinois law does not permit physicians assistants to possess full practice authority. Tr. 326; *see* 225 ILCS 65/65-43.

an area of specialization and obtain licensure from the state. Tr. 51, 332-33. The advanced educational requirements may take between two-and-a-half to three years for a master's in nursing, and between four-and-a-half to five years for a doctorate in nursing. Tr. 358. CNPs receive a salary ranging between $119,000 and $144,000. *See* E. Ex. 14.

Based on the scheduling block, a CNP may see between 6-8 patients per day. Tr. 353. With each day divided into two four-hour sessions, a CNP would see one patient per hour. *Id.* However, some CNPs see between anywhere from 15-27 patients per day. Tr. 224-25. Some CNPs spend about 75% in a clinic and about 25% of their time completing paperwork, but, depending on scheduling, may spend 100% of their time in the clinic. *See e.g.* Tr. 234-35. Other CNPs, not on that scheduling block, spend about 70% of their time in direct patient contact. Tr. 279-80.

Certified Nurse Midwife

A CNM provides medical care for women relating to childbirth, pre- and post-natal care, and other gynecological treatments. Tr. 50. The University employs about 18 CNMs at the hospital and about 12 CNMs at Mile Square. E. Ex. 20. CNMs treat between 8-9 patients per day, based on the scheduling block, but may see less if treating a patient in labor. Tr. 354-55. A CNM must possess a bachelor's degree in nursing or qualification as a nurse and a master's or doctorate in nursing. Tr. 52, 358. The advanced educational requirements take about two-and-a-half to three years for a master's in nursing, and between four-and-a-half to five years for a doctorate in nursing. *Id.* A CNM receives a salary ranging between $120,000 and $155,000. P. Ex. 27-29.

Certified Clinical Nurse Specialists

A CCNS provides education to UI Health staff and patients areas but may provide some patient care. Tr. 52-53. The University employs about three CCNSs at the hospital. E. Ex. 20. Generally, a CCNS possesses a bachelor's degree in nursing or qualification as a nurse and a master's or doctorate in nursing. Tr. 52. Unlike the other APRNs, a CCNS's training focuses on education more than treatment. Tr. 52-53.

Certified Registered Nurse Anesthetists

A CRNA provides anesthesia during surgical procedures. Tr. 48. The University employs about 38 CRNAs at the hospital. E. Ex. 20. Like the other APPs, a CRNA works in collaboration with a supervising physician, specifically an anesthesiologist. Tr. 48. This collaboration results in the determination of what level of anesthesia is required for a surgery. Tr. 48-49. A CRNA may assist with 6-8 minor surgical procedures per day or just 1 major surgical procedure per day. Tr. 354-55.

Generally, a CRNA must earn a bachelor's degree in nursing or qualification as a nurse and earn a master's or doctorate in nursing, specializing in anesthesia. Tr. 151-52, 358. Most CRNAs obtain a doctorate in nursing. Tr. 152. Prior to enrolling in a master's degree program, a prospective CRNA must have at least two years of critical care nursing experience at a Level 1 trauma center. Tr. 151. Admission to these programs is extremely competitive due to the scarcity of schools offering anesthesia programs, high tuition, and the rigorous examination and vetting process. Tr. 151-52. Excluding the required critical care nursing experience, the time to earn the master's and doctorate for a CRNA is identical to that of the other requirements for APRNs. Tr. 52, 358. At UI Health, a CRNA receives a salary ranging between $240,000 and $277,000. P. Ex. 31. Recently, the University began offering CRNA applicants an $18,000 signing bonus. Tr. 153-54; P. Ex. 31, 32.

Physician Assistants

In contrast to the APRNs, a physician assistant does not require a nursing degree or training as a nurse.[25] Tr. 54. Rather, a physician assistant must earn a master's in medical science (MMS) degree and then obtain Board Certification. *Id.* The MMS degree provides similar training to that received by a physician but in an abbreviated manner. Tr. 54. A would-be physician's assistant can obtain an MMS following two years of classroom study and one year of rotational work across different medical disciplines. Tr. 55, 174-75. A physician assistant's license requires 100 hours of continuing medical education. Tr. 180.

As the job title suggests, a physician assistant assists a physician in the care and treatment of a patient. Tr. 176-77, 323. These duties include independently seeing patients, diagnosing patients, and prescribing a treatment plan for patients. Tr. 176-77. Unlike the APRNs, a physician assistant cannot obtain FPA status and must remain in collaboration with the supervising physician. Tr. 328. On average, a physician assistant may treat between 12-17 patients per day.[26] Tr. 207. The University employs about 25 physician assistants at the hospital and about 8 physician assistants across the Mile Square locations. E. Ex. 20; Tr. 322-23. A physician assistant receives a salary ranging between $125,000 and $143,000. Tr. 187; E. Ex. 22.

d. The Organizing Effort Leading to the Petition

In 2023, the Union began an organizing drive for APs at UIC. E. Ex. 12. It sought to represent APs as a collective, noting that this group of employees were the only ones at UIC without collective bargaining rights. *Id.* It held informational meetings in July and December 2023. *Id.* At some point following these meetings, the Union shifted its efforts to organizing APPs at UI Health. Tr. 283-84. During this effort, in or around July 2024, Parshall approached some CRNAs to discuss joining the organizing effort. Tr. 284. Following two meetings with CRNAs, Parshall and the Union believed that the CRNAs were uninterested in joining the Union. Tr. 285-86. The organizing effort resulted in the petitioned-for bargaining unit, excluding the CRNAs and the physician assistants in the anesthesiology department.

e. Origins of Presumptively Appropriate Bargaining Units in the University of Illinois System

On November 14, 1985, a union petitioned to represent a group of about 18 physicians at the McKinley Health Center at the University's Champaign-Urbana campus. *Univ. of Ill.*, 2 PERI 1115 (Hearing Officer, August 29, 1986). At the time, the University employed about 1,000 APs at the Champaign-Urbana campus and included the physicians within the AP categorization. *Id.* After a hearing, the hearing officer disagreed with the University's argument that the physicians shared a broad community of interest with the APs and determined that the bargaining unit was appropriate under Section 7 of the Act. *Id.* After reviewing the University's exception regarding the broad community of interest argument, the Board decided to conduct rulemaking regarding appropriate bargaining units at the University and deferred judgment on the physicians' petition. *Univ. of Ill.*, 3 PERI 1054 (IELRB, May 14,

[25] A physician's assistant must satisfy some prerequisites before gaining admission to an MMS program. Tr. 55.

[26] Ehrhardt testified that her department increased the maximum number of patients seen per day from 16 to 18 due to no-shows at appointments. Tr. 189-90. She testified that since the increase of patient load, she averaged between 12 and 17 patients per day. Tr. 207

1987). The Board expressed a desire to avoid incoherent units without regard to a larger scheme. R Ex. 16 (comments from Board Chairman Gerald Berendt). During the rulemaking process, Clark, the University's attorney, submitted a draft proposal of the rules that included a presumptively appropriate unit of APs at UIC.[27] The final rules, taking effect on September 8, 1989, included this presumptively appropriate unit of APs at UIC and included the three elements that must be shown by "clear and convincing evidence" to deviate from a presumptively appropriate unit. E. Ex. 19. Since the Board's adoption, these rules have remained largely unchanged. *See* 28 Ill. Reg. 7,993 (June 11, 2004); 38 Ill. Reg. 8,395 (April 18, 2014). The elements for deviation have never changed.

On January 4, 1990, the Board issued an order to show cause why the physicians' petition should not be dismissed in light of the then-newly adopted presumptively appropriate rules. E. Ex. 19. The union did not respond to the order to show cause. The Board dismissed the petition, because the petitioned-for unit was not in conformity with the presumptively appropriate bargaining unit, and the union did not provide evidence to justify deviation from those units. *Univ. of Ill.*, 1985-RC-0047-C (IELRB, February 26, 1990).[28]

III. DISCUSSION

Section 1135.20 of the Rules sets forth the presumptively appropriate bargaining units of educational employees employed by the University of Illinois system. 80 Ill. Admin. Code § 1135.20. Section 1135.20(b) of the Rules sets forth the ten (10) presumptively appropriate bargaining units at UIC. 80 Ill. Admin. Code § 1135.20(b). These presumptively appropriate bargaining units include one made up of "[a]ll 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." 80 Ill. Admin. Code § 1135.20(b)(6).

Section 1135.30 of the Rules provides for the formation of a bargaining unit not presumptively appropriate. 80 Ill. Admin. Code § 11135.30(a). A petitioner seeking to form such bargaining unit must, by clear and convincing evidence, show (1) that the unit is otherwise appropriate under Section 7 of the Act; (2) that special circumstances and compelling justifications make it appropriate for the Board to establish a unit different from those units deemed presumptively appropriate; and (3) that establishment of a different unit will not cause undue fragmentation of bargaining units or proliferation of bargaining units. *Id.* The Rules define undue fragmentation as meaning "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." 80 Ill. Admin. Code § 1135.30(a)(3). "Clear and convincing evidence" is "the quantum of proof that leaves no reasonable doubt in the mind of the fact finder as to the truth of the proposition in question." *Bd. of Trustees of the Univ. of Ill. at Urbana-Champaign and AFSCME, Local 698*, 29 PERI 67 (ILERB, September 24, 2012) (applying clear and convincing standard to alleged fraud in card authorizations). Because the Union petitions to represent a bargaining unit different from the applicable presumptively appropriate unit, it must be determined whether the testimony and facts presented by the Union at hearing show by clear and convincing evidence that (1) the unit is otherwise appropriate under Section 7 of the Act;

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[27] The original copy of the proposed rule is in the Board's records. Accordingly, I take notice of the proposal. Tr. 671.
[28] A copy of this order is in the Board's records. Accordingly, I take notice of the dismissal order. Tr. 671.

(2) special circumstances and compelling justifications support deviation from the presumptively appropriate unit; and (3) the deviation from the presumptively appropriate unit will not cause undue fragmentation or proliferation of bargaining units at UIC.

a. Application of the Workers Rights Amendment on the Presumptively Appropriate Rules

In November 2022, voters approved the Workers Right Amendment (WRA) to the Illinois Constitution. The WRA grants employees the "fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work." ILCS Const. Art. 1, § 25. The Union argues that the effect of the presumptively appropriate rules violates the intent of the WRA and that this violation should be considered in the application of these rules. However, the Board lacks the authority to interpret the Illinois Constitution. *Illinois Council of Police and Village of Bellwood*, 41 PERI ¶ 50 (ISLRB, Sept. 12, 2024)[29] (citing *Goodman v. Ward*, 241 Ill. 2d 398, 411 (2011)) (administrative agencies have no authority to declare statutes unconstitutional or even to question their validity). Further, the Board must follow its own Rules until changed through the rulemaking process. *Bd. of Trustees of the Univ. of Ill.*, 30 PERI 299 (ELRB, May 15, 2014), *aff'd* 2015 IL App (4th) 140557. If this decision were to contemplate the WRA's effect on the presumptively appropriate rules, it would violate the Board's own processes. At this stage, the Rules must be applied and followed. The Union identifies no legal authority on which this ALJ or the Board can, at any juncture, declare these rules unconstitutional in light of the WRA. To the extent that the Union argues the WRA overrides or weighs on these rules, such consideration goes beyond this ALJ's authority and that of the Board. Accordingly, these arguments cannot be considered in this decision.

b. Appropriateness Under Section 7 of the Act

Section 7 of the Act directs that the Board shall decide upon "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." 115 ILCS 5/7(a). Section 7 does not require that a proposed unit be the most appropriate unit; rather, it requires that the unit be appropriate. *Black Hawk College Professional Technical Unit v. IELRB*, 275 Ill.App.3d 189, 198–99 (1st Dist. 1995). In determining the appropriateness of the bargaining unit, the analysis focuses on the similarities of the employees, not the differences. *Id* (addressing combination of bargaining units) (citing *Sandburg Fac. Ass'n, IEA-NEA v. IELRB*, 248 Ill. App. 3d 1028, 1036 (1st Dist. 1993). To refuse to find a bargaining unit appropriate because of a possible 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, July 14, 2005), aff'd, No. 4-05-0713 Ill. App. Ct. (4th Dist. 2006) (unpublished order).

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[29] Decisions of the Illinois Labor Relations Board, although not binding, shall be considered by the IELRB. 115 ILCS 5/17.1.

When determining the existence of a community of interest, the Act directs that the analysis encompass "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." 115 ILCS 5/7(a). In determining the community of interest and appropriateness of a bargaining unit, the Board directs that these factors be viewed "relative to the total context" of the petition and "be viewed in light of all surrounding circumstances." *Thornton Township High Sch. Dist. No. 205*. 2 PERI 1103 (IELRB, 1986) (inclusion of computer lab supervisors inappropriate for paraprofessional unit when more community of interest shared with clerical employees). A proposed unit should be certified if it meets the applicable standards in the Act, even though another unit of employees would also be an appropriate unit. *Board of Trustees of the University of Illinois v. IELRB*, 2015 IL App (4th) 140557, ¶ 40 (quoting *Sandburg Faculty Ass'n.*, 248 Ill. App. 3d at 1039). However, a bargaining unit will not be appropriate if, under all of the circumstances, it is artificial or arbitrary. *Thornton Township,* 2 PERI 1103; *see also Sedol Teachers Union v. IELRB*, 276 Ill. App. 3d 872, 883 (1st Dist. 1995).

Historical Pattern of Recognition and Industry Practices

As mentioned above, there are no bargaining units of non-visiting APs at the University. Under the Board's jurisdiction, at least since the implementation of the presumptively appropriate rules, there has been no historic pattern of recognition for APs at the University. Units of health care workers, such as licensed practical nurses, resident and interns, and other staff and administrators, have organized at UI Health. E. Ex. 21 (links to online collective bargaining agreement library between the University and bargaining units of employees at UI Health). These bargaining units, while made up of educational employees at UI Health, either did not deviate from a presumptively appropriate unit or were formed prior to the adoption of those rules. However, outside the realm of educational employers, units of APRNs have been recognized by the National Labor Relations Board (NLRB).[30] In 2024, the Regional Director for the NLRB Region 18 determined that a bargaining unit of APRNs, specifically nurse practitioners, physician assistants, certified nurse midwives and clinical nurse specialists, was appropriate under Section 9(b) of the National Labor Relations Act (NLRA). *Essentia Health and Minnesota Nurses Ass'n*, NLRB Reg. 18, Case No. 18-RC-330714 (Reg. Dir. Dec,, June 11, 2024) (unit of APRNs spread across numerous facilities appropriate); *Essentia Health & Minnesota Nurses Ass'n*, No. 18-RC-330714, 2025 WL 40841, at *1, n1 (NLRB Order, Jan. 7, 2025) (request for review pending). Further, the Union indentifies bargaining units at Cook County Hospital as an example of bargaining units that separate CRNAs from other APRNs. *See* P. Ex. 58, 59. However, it provided no testimony to explain or compare these units to the petitioned-for bargaining unit. Despite the similarities between these bargaining units and the petitioned-for bargaining unit, there is no pattern of

[30] Because the Act and the Illinois Public Labor Relations Act derive from the NLRA cases arising under the NLRA, while not binding on the Board, should be taken as highly instructive and be carefully examined, except where the General Assembly modified the NLRA's language. *See City of Burbank v. ISLRB*, 128 Ill. 2d 335, 345 (1989); *see also Schaumburg Community Consolidated School District 54 v. IELRB*, 247 Ill. App. 3d 439, 455 (1st Dist. 1993) (comparing Section 3 rights under the Act with Section 7 rights under the NLRA).

recognition under the Board's jurisdiction for APs or the APPs subset seeking recognition. Accordingly, this factor bears no weight on this analysis.

As the University notes, the Board has taken note of industry practices when determining the reasonableness of a bargaining unit. *E.g. Bd. of Trustees of the Univ. of Ill.*, 28 PERI 140 (ELRB, Sept. 15, 2011) (Sered dissenting) (recommending official notice of bargaining units at other public universities), *rev'd on other grounds*, 2012 IL App 4th 110836. This notice was limited to a dissent and does not appear in the Act. As discussed above, while there are similar units of APPs in the medical field and units made up solely of CRNAs at neighboring hospitals, there is no pattern of historical recognition for APs or APPs under the Act. *See* P. Ex. 58, 59. To the extent that industry practices would be analyzed in addition to the statutory factors, this element does not weigh in favor of or against the Union's arguments that the petitioned-for unit is appropriate under Section 7(a) of the Act.

Skills and Functions

The physician assistants, CNPs, CNMs, CCNSs share similar skills and functions. At a minimum, each job title requires a master's degree in the medical field. APRNs, specifically the CNPs, CNMs, and CCNSs, must earn a master's degree in nursing but often earn a doctorate, from an accredited APRN program. An APRN must receive board certification and become licensed. Physician assistants must earn a master's in medical sciences and board certification. These degree programs for a physician assistant and an APRN run roughly three years: an APRN receives a master's degree in between two-and-a-half to three years and a physician assistant receives a master's degree in three years. The three years for the physician assistant degree program includes two years of classroom work with one year of rotational work. While a doctoral degree would require extra time, the minimum educational requirements remain similar in time. Beyond board certification, the APRNs and physician assistant must be licensed by the state of Illinois in their respective position and obtain various other licenses and certifications, such as an unrestricted DEA license, an Illinois controlled substance license, and life support certification.

This group also engages in the same job function: treating patients. While the method and manner of treatment varies by department and role, their work boils down to the same function. Every CNP, CNM, and physician assistant engages in diagnosing, treating, and caring for patients through face-to-face interaction over the course of an appointment or multiple appointments. Through this, they develop treatment plans and prescribe medication. On an average day, most APPs see and treat a similar number of patients. While circumstances may vary based on the procedure or departmental assignment, the percentage of time, roughly 70-75%, an APP dedicates to patient treatment remains consistent across all departments. Accordingly, the APPs in the petitioned-for unit share the same skills and functions. This factor weighs in favor of finding that these APPs share a community of interest.

However, the University argues that the CRNAs and physician assistants in the anesthesiology department share these same skills and functions.[31] This group follows a similar educational and training path to licensure, but the APPs engaged in anesthesiology face a more intensive, competitive, and specialized path. Like the APPs,

[31] References to CRNAs in this ALJRDO following this footnote refer to both the CRNAs and the physician assistants working in the anesthesiology department.

CRNAs work with a supervising physician; in this circumstance, they work with an anesthesiologist to develop the level of anesthesia needed. Unlike the other APPs, CRNAs engage in the specific task of providing anesthesia during surgery. The evidence does show any variation from this task. A CRNA's involvement with a patient begins and ends within the scope of the surgical procedure. The specialization and expertise in this aspect of patient care distinguish the CRNAs from the other APPs.

Interchangeability and Contact Among Employees

The evidence indicates that APPs have interchangeability. A job opening at Mile Square, for example, could be filled by either an APRN or a physician assistant. *See* P. Ex. 23, 24; Tr. 141. While an APRN working in the nephrology department possesses expertise in nephrology, conceivably a physician assistant possessing that same expertise in nephrology could step into that role, because job title requires the same level of training in diagnosing ailments and treating patients. In contrast, a CNP or CNM or physician assistant could not step into the role of a CRNA. A CRNA's education and training prepare them for one specific and specialized task: providing anesthesia during surgical procedures. This training makes a CRNA a specialist among other specialists. No other AP or APP could perform the work that a CRNA or a physician assistant working in the anesthesiology department does.

The AP category at UIC encompasses a wide range of job titles with varying requirements and career paths and with placement in a wide range of the University's organizational units. The petitioned-for unit is limited to specific group of employees with only two possible educational and licensing requirements and placements in only one of five of the University's organizational units.[32] While the University identifies other APs engaged in patient treatment, those APs lack the same educational background and training that bind the APPs into a group and show their interchangeability. Just as a dentist could not prescribe a course of treatment for a patient with intestinal issues, a physician assistant could not prescribe a course of treatment for a tooth removal. Or, at least, the patient may not assent to such treatment. That APPs engage in the same amount of physical activity as some other APs, like the coaches in intercollegiate athletics does not indicate a broader interchangeability. Swapping an APRN for a coach and vice versa would not lead to successful results on either end.

The APPs have some level of contact throughout the day. Ehrhardt testified that she shares her workspace with CNPs and other physician assistants. Those employees that engage in patient treatment in the same department work together, but this interaction appears limited to employees working in the same department or the same building. UI Health's physical location extends beyond its campus on the west side of UIC and the UIC campus overall. The APPs can work at any of these locations and beyond. Ehrhardt works in the Specialty Care Building on the UI Health campus and at the outpatient facility in University Village. Tr. 201-02. Kapelinski also works in the Specialty Care Building but may see patients at any of the locations where UI Health opened an outpost. Tr. 217-18. While most of his patient care calls come from the Specialty Care Building, Martinez does not have a central work location

[32] Only one APP comes from the College of Dentistry; all other APPs are in either the hospital, the College of Medicine, Mile Square, or the College of Nursing. Tr. 318.

and works all over the UI Health campus as emergency situations arise. Tr. 260. Interactions among APPs are this geographically diverse employer are rare and entirely dependent on the department in which they work.

Accordingly, the evidence shows an interchangeability among the APPs in the petitioned-for unit significant enough to weigh in favor of finding a community of interest. While differences in specialization exists, the baseline similarities in patient care show interchangeability. The evidence does not show contact among the employees.

Common Supervision

APPs at UI Health fall under the broad supervision of Mersha. However, direct supervision of an APP arises at the department level. The University contends that this supervision comes from the five organizational entities technically employing each individual APP, the testimony shows that direct supervision arises more from the specific department-level supervisors and managers that an APP interacts with during the workday. The direct supervisors are those in office with the APPs. The broad scope, as it effects the broader working conditions and goals of the APP program come from Mersha. An APP's status as an APP separates them in terms of top-down supervision and directives from other APs and health care workers. While spread across five organizational units and numerous departments, all APPs share common supervision. Accordingly, the evidence shows common supervision. This factor weighs in favor of finding a community of interest.

Wages, Hours, and Other Working Conditions

APPs, like all other APs, are FLSA exempt and receive access to the same benefits package, including vacation, sick time, holiday, health insurance, and retirement packages. Like all APs, APPs are appointed to their positions on 12-month basis and are subject to same renewal and non-renewal or termination procedures. While raises are available, APs lack access to any formal promotional pathway as faculty and civil service employees do. Promotions arise at the discretion of an AP's department or unit. Like promotions, an AP's department possesses discretion over annual raises. This discretion over raises and promotions separates APPs and APs and places APPs in a group of shared wages, hours, and working conditions. A general AP can receive a minimum starting salary of $43,888. APPs, such as the CNMs, CNPs, CCNSs, and physician assistants all receive salaries in a range between $119,000 and $150,000. The job title dictates an individual AP's wages rather than what a system sets. As an example, the expensive educational training and competitiveness sets a CRNA's salary range between $240,000 and $277,000 with an $18,000 hiring bonus. The APPs in the proposed unit receive a salary range common only to and shared by those job titles.

Compared with the other APs spread across the 50 organizational units at the University, the APPs at issue are confined to five of those units. While APs across the UIC share access to same range of benefits and base level of pay, the individual units place limits on the use of those benefits and determines the range of wages. Accordingly, the evidence shows that this factor weighs in favor of finding a community of interest.

Desires of the Employees

The desires of employees are an important consideration under Section 7 of the Act, because the goal in determining the appropriateness of a bargaining unit is to ensure employees have the fullest freedom in exercising the rights guaranteed by the Act for the purpose of collective bargaining. *Black Hawk College*, 275 Ill. App. 3d at

198-99. Those desires may be drawn from the petition and the requisite of showing of interest. *Board of Trustees of the University of Illinois*, 21 PERI 119; *see also Sedol*, 276 Ill. App. 3d at 884 (relied on Board's finding that 30% of employees sought representation as evidence of desires). Here, the Union provided a petition supported by signed authorization cards. This evidence establishes the desire of the APPs, at least within the petitioned-for unit configuration. While the Union asserts that it presented testimony that CRNAs do not want to be in the unit, the testimony indicates that the Union believes that CRNAs do not wish to be represented. The exact desires of the CRNAs are unknown. The University argues that this missing evidence prevents the weighing of this factor, but to not do so would ignore the clear evidence of the desires of the employees who want to exercise their rights under the Act. The desire of the employees weighs in favor of finding a community of interest.

Overall Appropriateness

In the weighing the community of interest factors, the Union establishes that it seeks to form an appropriate unit under Section 7 of the Act. The APPs – CNMs, CNPs, CCNSs, and physician assistants – have similar skills and functions, share common supervision, have some interchangeability, share a similar wage scale and benefits, and express a desire to form a unit. In light of all surrounding circumstances, this unit is appropriate under the Act. There are similarities between these APPs and other APs, such as clinical physicians and psychologist, employed within UI Health. Contrary to the University's arguments, the exclusion of these employees, despite the similarities, does not make the petitioned-for unit inappropriate. This line of reasoning leads to the formation of a "most appropriate" unit, not an inappropriate unit. That a more appropriate unit may exist does not defeat the appropriateness of another unit. *Sandburg Faculty Ass'n.*, 248 Ill. App. 3d at 1039.

The University's argument that the exclusion of the CRNAs creates an arbitrary and artificial unit are unfounded. Arbitrariness and artifice must be shown under all of the circumstances. *Sedol*, 276 Ill. App. 3d at 883. The evidence shows a similarity in skill, function, and interchangeability among the CNPs, CNMs, CCNSs, and physician assistants that is not as present with the CRNAs. There are similarities among these job titles, to be clear, but the CRNAs' specialization and expertise in anesthesia sets them apart. It may be appropriate to include the CRNA, this exclusion does not make the petitioned-for unit inappropriate or arbitrary. Accordingly, the Union shows by clear and convincing evidence that the petitioned-for unit is appropriate under Section 7 of the Act.

c. Special Circumstances and Compelling Justifications

Section 1135.30(a)(2) of the Rules requires the Union to show by clear and convincing evidence "that special circumstances and compelling justifications" make it appropriate for the Board to deviate from a presumptively appropriate bargaining unit. 80 Ill. Admin. Code § 1135.30(a)(2). The Board did not provide a definition of "special circumstances and compelling justifications," because it preferred to analyze this factor on a case-by-case basis. *Univ. of Illinois Chicago*, 6 PERI 1126 (IELRB, March 8, 1990). In the rulemaking process, it intentionally adopted this vague phrase to enhance the utility of the presumptively appropriate rules in the face of unanticipated changes in educational employment. *Id.* The Board deems the absence of another petition seeking to represent the same employees in a presumptively appropriate unit a factor weighing in favor of establishing "special circumstances and compelling justifications." *Id*; *Bd. of Trustees of the Univ. of Ill*, 29 PERI 6; *Bd. of Trustees of Univ. Ill.*, 21 PERI

119. This factor alone will not demonstrate circumstances and justifications. *Bd. of Trustees of the Univ. of Ill.*, 30 PERI 299 (ELRB, May 15, 2014).

In the University's view, a subsection of a presumptively appropriate bargaining unit may only break from that unit where (1) the University stipulated to the unit; (2) the employees do not fall under the umbrella of a presumptively appropriate unit; or (3) the union petitions to add unrepresented employees to an existing bargaining unit. *See Univ. of Illinois Chicago*, 6 PERI 1126 (stipulated); *Bd. of Trustees of Univ. Ill.*, 21 PERI 119 (visiting APs not part of any presumptively appropriate unit); *Bd. of Trustees of the Univ. of Ill.*, 29 PERI 6 (addition to existing bargaining unit). It also notes that the Board found certain employees, teachers at the high school on the Champaign-Urbana campus, sufficiently distinct from faculty members at the university. *See Bd. of Trustees of the Univ. of Ill.*, 30 PERI 299 (high school teachers distinct from university faculty). This case, it argues, does not align with the special circumstances from any of those cases where a unit deviated from the Rules.

Instead, the University analogizes this petition to one filed by a group of biomedical engineering technicians at UI Health. *Bd. of Trustees, Univ. of Ill. at Chicago*, 12 PERI 1073 (IELRB, August 19, 1996). The technicians sought to join a bargaining unit consisting of electricians. In applying the presumptively appropriate rules, the ALJ determined that unless the technicians were craft employees, the petitioner must satisfy the elements set forth in Section 1135.30(a) of the Rules. The Board found that the petitioner failed to show that any configuration of the unit, whether included with the electricians or the technicians alone, would be appropriate under Section 7 of the Act. Moreover, the Board noted that the petitioner lacked any evidence showing special circumstances or compelling justifications. Instead, the petitioner seemingly rested its evidence on the absence of another petition, which alone cannot satisfy this element. This case is distinguishable from the instant petition. Unlike that case, the Union shows by clear and convincing evidence that the petitioned-for unit is appropriate under Section 7 of the Act. Moreover, the Union's special circumstances and compelling justification do not rest on the absence of another petition. It provides evidence of the distinctiveness of this bargaining unit in comparison to the overall group of APs, limitations on APPs that are unique to the job title, and the shared similarities of the APPs.

The Union argues that circumstances and justifications arise from the University's use of the AP category as a catch-all for all those employees not within the civil service system or faculty overlooks the variety and distinctiveness of the job titles in the AP category. It argues that the primary definition of AP comes from its lack of belonging in the faculty or civil service groupings. The University divides the APs among about 50 different departments at UIC. Each department generates its own job description and duties. Each department determines initial compensation and raises within the range authorized by the University's president. Aside from the common benefits package, little else binds the APs together. Even so, while all APs share in the same sick time and vacation time benefit, the individual departments develop policies that place limitations on the use of those benefits, based on the duties of the job.[33] This categorization overlooks the distinctive qualities that bind the APPs into a group.

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[33] Ehrhardt and Kapelinski testified that they must provide between two and three months' notice to use vacation time. Tr. 210-11, 236-37. Mersha testified that the realities of clinical work require such advance notice due to patient scheduling. Tr. 361-

The Board specifically declined to adopt a definition for "special circumstances and compelling justifications" so as to be flexible in the event of unanticipated changes in educational employment. *Univ. of Illinois Chicago*, 6 PERI 1126. The Board acknowledged an inability to predict all future unit descriptions and situations that may be presented by petitions. *Id.* The distinctive nature of the APPs compared to the greater AP category provide clear and convincing evidence of the compelling justifications necessary for deviation from the presumptive appropriate bargaining unit of APs. The petitioned-for unit is not a random collection of employees. It is a specific subset of employees sharing in the same duties and requiring the same or similar education backgrounds, training, and certifications needed to work in these job titles. These qualities set them apart from the other APs working at UIC.

Accordingly, the Union shows by clear and convincing evidence that special circumstances and compelling justifications support deviation from the presumptively appropriate bargaining unit.

d. Undue Fragmentation

Section 1135.30(a)(3) of the Rules requires the Union to show by "clear and convincing" evidence that the establishment of a unit other than a presumptively appropriate unit will not cause "undue fragmentation of bargaining units or proliferation of bargaining units." 80 Ill. Admin. Code § 1135.30(a)(3). It defines these concerns as causing the number of bargaining units to be such that it would "threaten to interrupt services, cause labor instability, and cause continual collective bargaining and a multitude of representation proceedings." *Id.*

The Union's evidence showed that the petitioned-for bargaining unit would be limited to those departments operating under the UI Health banner. The APPs are placed in five of the University's organizational units at UIC. Any service interruptions or instability caused by the formation of this unit would be limited to those organizational units beneath the UI Health banner and not widespread across the campus. *See Bd. of Trustees of the Univ. of Ill.*, 30 PERI 299, *aff'd* 2015 IL App (4th) 140557, ¶¶ 57-59. The integration of the APPs in the colleges at UIC overall arises from the "courtesy" appointment required by the medical bylaws. Tr. 106; E. Ex. 36. There would be no danger of fragmentation or proliferation in other areas of UIC. Further, the University's testimony identified six strikes among the bargaining units at UI Health in the last 13 years. Out of the nearly 5,000 days over that time, those strikes lasted about 40 days collectively. The addition of another bargaining unit would not cause an interruption to services and labor instability greater than these strikes.

The University predicts that formation of this bargaining unit would open the floodgates for dozens of smaller bargaining units across UIC. However, each of these predicted units would still need to satisfy the three elements for deviation from the presumptively appropriate units. The Rules remain in effect, and the burden needed to deviate from the presumptively appropriate units remains with the petitioner of each of these predictive units. Unlike the technician case discussed above, the petitioned-for unit collects five job titles, not just one. *Bd. of Trustees, Univ. of Ill. at Chicago*, 12 PERI 1073. This unit would encompass nearly of the eligible APPs at UI Health. There is

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62. He noted that an APP could take vacation time on less notice but would need to make up that lost clinic time. Tr. 362-63. While Martinez testified that he could request a vacation with as little as two weeks' notice, he worked in a different department without scheduled patients. Tr. 271.

nothing that suggests certifying the petitioned-for unit would cause continual collective bargaining or a multitude of representation proceedings. While APs do have some level of representative capacity at the campus-level, formation of a bargaining unit could lead to a more efficient representation relationship between the APPs and the University. As the evidence showed, a collective bargaining agreement can be negotiated between nine and twelve months, while a proposal from one of the AP committees takes multiple years to even be addressed.

Accordingly, the Union has shown by clear and convincing evidence that the petitioned-for bargaining unit would not cause undue fragmentation or proliferation of bargaining units at UIC.

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 Board's Rules. The Executive Director is hereby directed to process the majority interest petition in accordance with this decision and the Board'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 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 response 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 30th day of April 2025.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Steven S. Shonder, Jr.
Administrative Law Judge