

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

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| Illinois State University, |) | |
| |) | |
| Employer |) | |
| |) | |
| and |) | Case No. 2024-RC-0013-C |
| |) | |
| Lab School Education Association, |) | |
| IEA-NEA, |) | |
| |) | |
| Petitioner |) | |

OPINION AND ORDER

I. Statement of the Case

On June 25, 2024, Lab School Education Association, IEA-NEA (Union) 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 approximately 123 persons employed by Illinois State University (University or Employer) in various titles in its Laboratory Schools and Heart of Illinois Law Incidence Association (HILIA) program. The Employer objected to the petition. As a result, the parties appeared for a hearing before an Administrative Law Judge (ALJ) on September 11 and 12, 2024. On March 12, 2024, the ALJ issued a Recommended Decision and Order (ALJRDO) finding that the Assistant Librarian title should not be in the unit, but that the petitioned-for unit is otherwise appropriate for the purposes of collective bargaining within the meaning of Section 7(a) of the Act and the University is the sole employer of the petitioned-for employees. The University filed timely exceptions to the ALJRDO, and the Union filed a timely response.

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

A. Joint Employer Status

All but one of the University's six exceptions involve the ALJ's conclusion that the University is the sole employer and is not a joint employer with the HILIA governing

board of certain of the petitioned-for titles or positions. The test to determine whether joint employer status exists is “whether two or more employers exert significant control over the same employees – where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment.” *Orenic v. ISLRB*, 127 Ill. 2d 453, 537 N.E.2d 784, 794 (1989) (citing *NLRB v. Browning-Ferris Industries of Pennsylvania, Inc.*, 691 F.2d 1117 (3rd Cir. 1982)). Relevant factors in determining joint employer status are the role of the purported joint employer, HILIA in this case, “in hiring and firing; promotions and demotions; setting wages, work hours, and other terms and conditions of employment; discipline and the actual day-to-day supervision and direction of employees on the job.” *Orenic*, 537 N.E.2d at 794-795. The *Orenic* test was adopted to apply to cases arising under the IELRA in *AFSCME v. IELRB*, 197 Ill. App. 2d 54, 678 N.E.2d 476 (4th Dist. 1990).

The University insists that the ALJ’s reliance on the day-to-day direction, supervision, hiring and discipline of HILIA employees was undue. Yet per the Illinois Supreme Court in *Orenic*, the ALJ was supposed to rely on those factors to determine joint employer status. Failing to do so would deviate from established binding legal precedent. The University complains that the ALJ minimized the financial contributions HILIA’s governing board and member districts make to fund employee salaries by mischaracterizing it as reimbursement and he ignored HILIA’s authority and funding of positions and control over the program and its budget. In *Orenic*, the question before the Court was whether counties may be considered joint employers of circuit courts’ nonjudicial employees in light of their role in funding the circuit courts. The Court answered the question in the negative. “[T]he fact that a county pays the salaries of other nonjudicial employees in the judicial branch, or even administers personnel policies covering them by agreement with the judicial branch, does not in constitutional or statutory terms make the county their employer. Rather, the State, personified by the chief judge of each circuit, is their employer.” *Orenic*, 537 N.E.2d at 795.

The University cites a multitude of cases where the courts found joint employer status based on financial factors. However, those cases are distinguishable from the instant case because the impact of the purported joint employers’ funding in those cases was so great that the initial single employers did not have complete control over the wages, hours and

working conditions of their employees, which logically made the purported joint employers necessary parties to the creation of an effective bargaining relationship. *County of Will v. ISLRB*, 220 Ill. App. 3d 62, 580 N.E.2d 887 (3rd Dist. 1991) (The county board had “exclusive control over funding” of the county executive. During negotiations between the union and the county executive, the county board made known the limitations of any collective bargaining agreement that it would approve.); *County of Will v. ISLRB*, 219 Ill. App. 3d 183, 580 N.E.2d 884 (3rd Dist. 1991) (Joint employer status where county provided 40% of the board of health’s funding through a tax levy and approved its budget); *County of Kane v. ISLRB*, 165 Ill. App. 3d 614, 518 N.E.2d 1339 (2nd Dist. 1988) (Sheriff submitted an annual budget to the county board for approval. The county board had authority to appropriate funds and the sheriff was required to stay within those appropriations); *City of Rockford v. ISLRB*, 158 Ill. App. 3d 166, 512 N.E.2d 100 (2nd Dist. 1987) (Joint employer status where library derived the entirety of its revenue from city). In this case, the record does not reveal how much of the University’s funding comes from HILIA reimbursements. Approximately 123 employees are in the petitioned-for bargaining unit. Twenty-two of those 123 people are in HILIA positions. Even if the salaries of roughly 18% of the petitioned-for unit are funded by HILIA, that does not give HILIA the kind of control over the entire University budget that would render it a necessary party to an effective bargaining relationship between the Union and the University.

Accordingly, we affirm the ALJ’s finding that the University is the sole employer of the employees in the petitioned-for unit.

B. Civil Service

The University argues that the Civil Service title or position of “Extra Help – Skilled” should be excluded from the unit because it is a substitute teacher position, rather than a regularly employed part-time position. The actual title of substitute teacher is neither included in nor excluded from the petitioned-for unit. Marie Houghton (Houghton), the employee in the Extra Help – Skilled position is a certified substitute teacher and provides speech language pathology services as required in students’ Individualized Education Plans (IEP). Houghton regularly substituted for a HILIA faculty associate specializing in speech language pathology services during the 2022–2023 and 2023–2024 school years.

At the time of the hearing in this case, at the start of the 2024–2025 school year, the University had not yet had an opportunity to use Houghton as a substitute. Houghton is classified at Extra Help – Skilled instead of substitute or daily rate substitute due to the level of skill required as a Speech Language Pathologist necessary to meet students’ IEP requirements.

The University claims in its exceptions that substitute teachers are rarely, if ever, included in educational bargaining units due to the irregularity of their employment. An examination of certifications issued by this Board shows that while substitute teachers are excluded from bargaining units with some regularity, they are included in enough bargaining units to say that the University’s contention that they are “rarely, if ever” included is inaccurate. *See generally Kirby School District 140*, 41 PERI 82, Case No. 2025-UC-0008-C (Executive Director’s Recommended Decision and Order, November 19, 2024) (full-time substitute teachers included in unit); *Chicago Board of Education*, 41 PERI 58 Case Nos. 2024-UC-0036-C & 2024-UC-0037-C (Executive Director’s Recommended Decision and Order, September 18, 2024) (short-term substitute teachers included in unit); *Macomb Community Unit School District No. 185*, 40 PERI 73, Case No. 2024-UC-0007-C (Executive Director’s Recommended Decision and Order, December 14, 2023) (substitute teachers excluded); *Brookwood School District 167*, 40 PERI 62, Case No. 2023-UC-0024-C (Executive Director’s Recommended Decision and Order, November 15, 2023) (unit includes all regularly employed licensed (certificated) long term substitutes); *Salt Fork Community Unit Sch. Dist. 512*, 35 PERI 110, Case No. 2018-UC-0023-C (Executive Director’s Recommended Decision and Order, January 3, 2019) (substitute teachers excluded from unit).

The University also excepts to the ALJ’s inclusion of the title or position of “Civil Service Extra Help – Semi Professional” in the unit. One of the employees in that position, Stacy Welter (Welter), is also employed full-time by the University in the non-bargaining unit position of Business Administrative Associate. In her Civil Service Extra Help – Semi Professional position, Welter edits and proofreads the school yearbook and performs other miscellaneous duties, such as working admissions at school athletic events. The University describes these duties as “extracurricular” and likens them to extracurricular duties performed by bargaining unit members for which unions

frequently negotiate stipends or compensation and says that the IELRB does not place the extracurricular positions in the bargaining unit. However, unlike Welter, these employees are in bargaining unit titles and the union is bargaining compensation for extra duties performed by bargaining unit members. The Union is not seeking to place both of Welter's titles or positions in the bargaining unit. Welter's Business Administrative Associate position is not part of the petitioned-for unit or any other bargaining unit. The duties the University describes as extracurricular are not part of her Business Administrative Associate title. Instead, she performs them as part of an entirely separate title or position, one that the Union seeks to include in the petitioned-for unit. The other Extra Help – Semi Professional title or position is occupied by Charles Gault (Gault), who works as a lunchroom supervisor two hours a day. Unlike Welter, the record indicates this is the only title or position Gault currently occupies with the University. The University claims that compensation for lunchroom supervision duties by bargaining unit members is often negotiated by unions and the duty or position itself is not something that is included in the unit. Again, the Union is not seeking to add a separate title or position to the unit for work already performed by an employee whose position is in the petitioned-for unit. Gault is not in another petitioned-for position.

The University complains that the ALJRDO lacked rationale for including the titles or positions of Extra Help – Skilled and Extra Help – Semi Professional in the unit. Yet the University offers no plausible rationale for excluding them. As the party seeking to exclude this position from collective bargaining, the University has the burden of proving its contention. *Health & Hosp. Sys. of Cnty. of Cook v. Illinois Labor Relations Bd., Local Panel*, 2015 IL App (1st) 150794, 49 N.E.3d 518. Nothing in the record indicates that the University has met its burden. Thus, the ALJ correctly included the Extra Help – Skilled and Extra Help – Semi Professional titles in the bargaining unit.

IV. Order

We find that the petitioned-for unit is appropriate under Section 7 of the Act and affirm the ALJRDO 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: **May 21, 2025**

Issued: **May 21, 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
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

Lab School Education Association, IEA-NEA,

Petitioner

and

Illinois State University,

Employer

Case No. 2024-RC-0013-C

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. BACKGROUND

Petitioner, Lab School Education Association, IEA-NEA (Union), filed a petition with the Illinois Educational Labor Relations Board (Board) on June 25, 2024, seeking pursuant to a showing of majority interest, to represent approximately 123 persons employed by Illinois State University (University), in various titles, in its Laboratory Schools and Heart of Illinois Low Incidence Association program. The petitioned-for employees are currently unrepresented for purposes of collective bargaining. The University concedes, with the exception of five positions, the employees petitioned for are entitled to collective bargaining within the meaning of the Act. Nonetheless, the University opposed the petition, asserting as configured, the petitioned-for unit was inappropriate because it lacks a cohesive community of interest and some of the petitioned-for employees are employed both by the University and another employer.

The hearing in this matter was conducted on Webex, before the undersigned, on September 11 and 12, 2024, pursuant to Section 1110.105 of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135. Both parties were afforded and took advantage of an opportunity to file post-hearing briefs, on January 13, 2025.¹

II. ISSUES AND CONTENTIONS

Petitioner: The Union seeks to represent approximately 123 persons employed by the University in various titles, in its Laboratory Schools and Heart of Illinois Low Incidence Association program. The Union asserts, as configured, the petitioned-for unit is appropriate.

Employer: The University opposes the Union's petition, asserting the unit it seeks lacks a sufficient community of interest, contains a number of persons who are employed both by the University and another

¹Pursuant to Section 7(c-5) of the Act and Section 1110.105 of the Rules, the Union and University thrice executed limited waivers of the Board's obligation in the above-captioned case, to ascertain the petitioned-for employees' choice of labor organization within 120 days of the filing of the instant majority interest petition, and to commence a hearing within 30 days of service of the petition. The parties' waiver extends the deadline to May 6, 2025.

employer, and includes five positions which should be excluded, and therefore, contends the unit sought is inappropriate under Section 7(a) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.*

III. FINDINGS OF FACT

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

At all times material, Illinois State University was an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. Likewise, at all times material, Lab School Education Association, IEA-NEA, was a labor organization within the meaning of Section 2(c) of the Act and subject to the jurisdiction of the Board.

The University's Laboratory Schools are part of its College of Education and offer pre-kindergarten to twelfth grade instruction.² Tr. 29-30. The Laboratory Schools are housed in two buildings approximately one half-mile apart, the Thomas Metcalf School, for pre-kindergarten to eighth grade, and University High School, for ninth through twelfth grades. Tr. 34, 66-67, 247. Slightly more than 400 students attend Metcalf, and approximately 624 students attend University High School. Tr. 39. Anthony Jones is both an associate dean of the University's College of Education and director of its Laboratory Schools. Tr. 33. Jones reports to the dean of the College of Education, who reports to the University provost, who in turn, reports to the University president. Tr. 30-31, 59; Univ. Ex. 2.

Andrea Markert is the principal of University High, and Carmen Bergmann is the principal of Metcalf. Tr. 27, 67, 201-02; Univ. Ex. 2. Markert and Bergmann each report directly to Jones. Tr. 30-31; Univ. Ex. 2. Markert and Bergmann directly supervise, respectively, all persons employed at University High and Metcalf, and indirectly supervise those employed in their particular schools, by the University's Heart of Illinois Low Incidence Association (HILIA) program. Tr. 59, 62, 74, 269; Un. Ex. 2; Univ. Ex. 4. The HILIA director is Lisa Kendall, who also reports directly to Jones. Tr. 42, 72, 297. Markert, Bergmann, and Kendall are University employees. Tr. 27-29, 73, 107; Univ. Ex. 2.

As with any other elementary or high school, Metcalf and University High employ a substantial number of teachers, 43 at Metcalf and 48 at University High. Univ. Ex. 1. Teachers at the Laboratory Schools occupy the job title or classification of Faculty Associate and at a minimum, must possess a bachelor's degree and a valid Illinois educator's license. Tr. 58-59, 262; Un. Ex. 2; Univ. Ex. 1. In addition, among other employees, Metcalf employs four teacher aides, two program coordinators, and a nurse. Univ. Ex. 1. Shelly Thomas, the Metcalf nurse, occasionally does health training for the staff at University High. Tr. 251-52. One employee in the job title or

²Reference to exhibits in this matter will be as follows: Union exhibits, "Un. Ex. ____"; University exhibits, "Univ. Ex. ____." References to the transcript of proceedings will be "Tr. ____."

classification of Program Assistant works in the office of the director of Laboratory Schools. Univ. Ex. 1. In the job title or classification of Extra Help Semi-Professional, University High employs a lunchroom supervisor, Charles Gault, part-time, two hours per day, 11:00 a.m. to 1:00 p.m., and employs its full-time bookkeeper, Stacy Welter, separately, as a part-time yearbook editor, and ticket taker at its athletic events.³ Tr. 47-50, 69-70, 187-89; Univ. Ex. 1. Metcalf and University High share certain teachers, those who teach Mandarin, French, fine arts, theatre, chorus, band, and orchestra. Tr. 38-39. There had been Assistant Librarian position at Metcalf, but at the end of the 2023-2024 school year, the incumbent left the position and the University closed out the title, so it no longer exists. Tr. 155-58, 189, 198. The Laboratory Schools are selective enrollment schools, so once admitted, students pay limited fees but no tuition, much like any other public school. Tr. 39-40.

Heart of Illinois Low Incidence Association (HILIA) is a joint educational program organized under Section 10-22.31a of the School Code, 105 ILCS 5/10-22.31a, and its function is to provide services for students with hearing and vision disabilities. Tr. 40, 74-76, 296-97; Un. Ex. 1; Univ. Ex. 3. Since few students in any particular school in the area require such services, the University and the Regional Office of Education 17, covering McLean, DeWitt, Logan, and Livingston counties, entered into an agreement to create HILIA to provide those services as needed, to students throughout the region. Tr. 68, 74-76, 79, 289; Un. Ex. 1; Univ. Ex. 3. Pursuant to the agreement, the University provides the teachers and operates the program day-to-day through Kendall. Tr. 42, 44, 50, 72-73, 102-03, 107, 112, 115-16, 297, 299, 301-02; Un. Ex. 1; Univ. Ex. 3, 4, 6. The University employs and pays the salaries and benefits of the HILIA teachers and staff, and Regional Office of Education 17, through funding provided by its member districts and the State of Illinois, reimburses the University for the salaries paid HILIA teachers and staff, and other expenses incurred in providing their services, such as the purchase of necessary equipment or outlays for required remodeling, but does not reimburse for the cost of benefits. Tr. 80-81, 84, 99, 112-16, 193-194, 301-02; Un. Ex. 1; Univ. Ex. 3.

HILIA is governed by a five person board, one member of which is Jones, the director of the Laboratory Schools, and the remaining four are special education directors for partnering entities. Tr. 79; Univ. Ex. 4. The HILIA board meets once a month to review and approve invoices and expenses associated with its services, and to ensure the program's objectives are met. Tr. 80, 224. Member districts fund HILIA through fees, assessed for membership and services. Tr. 79-81, 84; Un. Ex. 1. The HILIA board determines the cost member districts will pay for services for their students. Tr. 96-97. Annually, Kendall produces a budget which the HILIA board reviews and approves. Tr. 97-99. As necessary, the HILIA board authorizes Kendall to create positions and post

³Faith Landes is a former Laboratory Schools student, now college student at an institution other than Illinois State University, who is employed by the University, in the job title or classification of Extra Help Skilled, for one week each year, during the last two or three summers, to help with the schools' band camp. Tr. 46-47. The evidence indicates, and the Union and University agree, Landes is a "short-term employee" under Section 2(q) of the Act, and is therefore excluded from the unit.

notices for candidates, but it has no role in selecting the particular applicant for hire; Kendall, with Jones' approval has that authority. Tr. 115-16, 300-02. Similarly, the HILIA board has no role in the discipline or discharge of HILIA employees. Tr. 115-16, 299-301.

The HILIA program does not serve regularly enrolled students at the Laboratory Schools, but rather students selected by the member districts in which they reside, after assessment by an Individualized Education Program (IEP) team and its determination they require HILIA's specialized services. Tr. 40-41, 44, 75, 78, 83, 289-91, 306-08; Univ. Ex. 3. HILIA may provide those services either in the Laboratory Schools or in the home districts of the students, each student's IEP is the determining factor as to where he or she will receive HILIA services. Tr. 68, 97, 290. In the 2024-2025 school year, seventeen students receive HILIA services at the Laboratory Schools, sixteen at Metcalf and one at University High, and approximately 200 students receive those services in their home districts. Tr. 77, 86.

HILIA is headquartered at the Laboratory Schools, and its staff is specially trained to teach or variously assist students with hearing or vision disabilities. Tr. 85, 262. In addition to Kendall and an office manager, the HILIA staff consists of twenty-two employees as follows: seventeen employees in the job title or classification of Faculty Associate; one in the job title or classification of Specialist Education Audiologist; one in the job title or classification of Senior Interpreter for the Deaf and Hard of Hearing; one in the job title or classification of Interpreter for the Deaf and Hard of Hearing; and two in the job title or classification of Special Education Paraprofessional. Un. Ex. 4, 5, 7, 8; Univ. Ex. 1, 5, 6. In addition, the University has Marie Houghton, in the job title or classification of Extra Help Skilled, assigned to the HILIA staff. Tr. 103-06; Univ. Ex. 1. Houghton is a certified substitute teacher and provides speech language pathology services as required in student IEPs. Tr. 103-04. During the 2022-2023 and 2023-2024 school years, Houghton regularly substituted for Rachel Wells, a HILIA faculty associate specializing in speech language pathology services. Tr. 105-06; Un. Ex. 12. As of the time of the hearing in the instant case, at the start of the 2024-2025 school year, Kendall had not yet had an opportunity to use Houghton as a substitute. Tr. 106; Un. Ex. 12. Nine of the HILIA faculty associates, referred to as "itinerants" work at nine locations in the 30 districts HILIA serves. Tr. 68, 88-90, 97; Univ. Ex. 5, 6. As much as possible, Kendall assigns itinerants to district locations based on ease of travel thereto. Tr. 89-92. Year to year, depending where demand for HILIA services arise, the number of HILIA employees working in member districts, as opposed to center-based, that is, the Laboratory Schools, fluctuates. Tr. 88-89, 125-28. HILIA's specialist education audiologist, Alison Shereen, works from an office in Metcalf, but goes to member districts as needed, which is generally quite often. Tr. 127-28. Similarly, for the 2024-2025 school year, HILIA's senior interpreter for the deaf and hard of hearing, Shannon Morrow, is primarily working at Metcalf, but in years past, has worked at University High and in member districts, as needed. Tr. 124-26.

Depending on the services required by student IEPs, at times, HILIA faculty associates teach in classrooms containing only HILIA students, and at other times, they work one-on-one with students. Tr. 86, 202, 292-93. Some HILIA students are in regular, general education Laboratory School classes, but are assisted therein by HILIA faculty associates, interpreters for the deaf and hard of hearing, and/or special education paraprofessionals. Tr. 204-06, 212-213. When one or more HILIA students are in a general education class, the faculty associate teaching the class will have much more contact with HILIA staff, than if he or she did not have HILIA students, because HILIA faculty associates, interpreters for the deaf and hard of hearing, and/or special education paraprofessionals will assist the HILIA student or students during the class itself and will consult with the non-HILIA faculty associate with regard to their own understanding of the concepts being taught and the terminology being used, overall student progress, and creation of learning aids. Tr. 205-06, 242-43, 249-251, 270, 274, 292-93. The interpreters and special education paraprofessionals will also assist students with visual and hearing impairments, in gym classes and at lunch. Tr. 212-13. Special education paraprofessionals will intervene should a HILIA student become overwhelmed in any school setting or act in a manner necessitating the student's removal from a class or other school setting. Tr. 212-13. Likewise, a HILIA faculty associate teaching a stand-alone class of, for example, fourth graders, will consult with the non-HILIA faculty associate teaching fourth grade to ensure the HILIA students are progressing in tandem. Tr. 203, 292-93. Because HILIA faculty associates are engaged in teaching students with visual and hearing impairments, they regularly consult with, or require assistance from, interpreters for the deaf and hard of hearing who are fluent in American Sign Language, and special education paraprofessionals who understand and are able to prepare materials in Braille. Tr. 88, 203-08, 212; Un. Ex. 5, 8. HILIA faculty associates who primarily work at the Laboratory Schools will have contact with HILIA itinerants at once-a-semester HILIA meetings and other times, irregularly, to discuss common issues dealing with vision or hearing impaired students. Tr. 204-05. HILIA and non-HILIA faculty associates serve on various committees and teams together, and have contact at general faculty meetings, active shooter training and other training classes, professional development sessions, and informally, in school hallways. Tr. 93-94, 242-43, 246-47, 252, 275.

The petitioned-for unit contains four categories of employees, and each category governs the rights and privileges to which the employees so classified are entitled. Univ. Ex. 1. The four categories are as follows: Administrative Professional; Faculty Associate; Civil Service; Civil Service Extra Help. Univ. Ex. 1. Shereen, HILIA's specialist education audiologist, is the sole employee in the Administrative Professional category. Univ. Ex. 1. The approximately 108 faculty associates are, not surprisingly, in the Faculty Associate category. Univ. Ex. 1. Twelve employees—the one employee in the Administrative Nurse I title, the two in the Program Coordinator title, the five in the Teacher Aide title, and the four employees, one each in the titles of Program Assistant, Senior Interpreter for the Deaf and Hard of Hearing, Interpreter for the Deaf and Hard of Hearing, and Special Education

Paraprofessional—are in the Civil Service category. Univ. Ex. 1. In the Civil Service Extra Help category are Gault, the two hours per day lunchroom supervisor, Houghton, the speech language pathology substitute teacher, and Welter, the Laboratory Schools bookkeeper, whom the University separately employs as a part-time yearbook editor, and ticket taker at its athletic events. Univ. Ex. 1.

The State Universities Civil Service Act provides Civil Service employees with a detailed, formal disciplinary/discharge process, including an appeal procedure. Section 110 ILCS 70/36o; Tr. 170. Likewise, the employees in the Faculty Associate category have a hearing process for tenured teachers facing dismissal and a disciplinary process laid out in the faculty handbook. Tr. 168-69; Un. Ex. 10. Civil Service Extra Help are terminable at will. Tr. 172. Although Administrative Professional employees do not have a formal disciplinary or discharge process, their employment may be terminated without notice or cause through the annual reappointment process for their positions. Tr. 169. Civil Service Extra Help employees do not receive performance evaluations, and generally, Administrative Professional employees do not either. Tr. 172-73; Univ. Ex. 13. Civil Service employees may undergo performance evaluations, but again, not necessarily. Tr. 172-73; Univ. Ex. 13. Employees in the Faculty Associate category are subject to a comprehensive, formal evaluation process. Tr. 50-51, 172; Un. Ex. 10.

The compensation ranges for each Civil Service employee classification is established by the State Universities Civil Service Act, and Civil Service Extra Help employees must be paid at the minimum wage level or better, however, generally, both categories of employees may earn overtime. Tr. 175-77. Pay for the employees in the Faculty Associate category primarily depends on degrees attained and number of years of teaching, and is detailed in the faculty handbook. Tr. 173-74; Un. Ex. 10. Administrative Professional employees are paid at a published rate determined by the University and dependent on the type of work they perform. Tr. 174.

Civil Service, Civil Service Extra Help, and Administrative Professional employees follow the University's holiday calendar. Tr. 184-85. Employees in the Faculty Associate category generally follow the Laboratory Schools' holiday calendar, except for HILIA faculty associates working in member districts, who follow their particular member district holiday calendar. Tr. 184-85; Un. Ex. 10. Administrative Professional and Civil Service employees earn and accrue vacation time; Faculty Associate and Civil Service Extra Help employees do not earn or accrue vacation leave. Tr. 178-79; Univ. Ex. 13. Civil Service, Faculty Associate, and Administrative Professional employees each earn one sick day per month of employment, while in paid status. Tr. 178. Civil Service Extra Help do not earn sick time. Tr. 178.

Civil Service and Administrative Professional employees generally work 8:00 a.m. to 4:30 p.m. Monday through Friday, 37.5 hours per week. Tr. 181-82. Civil Service Extra Help employees are limited to a total of 28 hours per week. Tr. 182. Employees in the Faculty Associate category have a work schedule of 8:00 a.m. to 4:30

p.m., Monday through Friday, 37.5 hours per week, but the University expects they will work as needed to complete necessary tasks, starting earlier or ending later, and thus, their actual hours of work depend on the particular grade they are teaching and may vary from year to year. Tr. 181-82; Un. Ex. 10. Should the University find it necessary to layoff employees, Civil Service employees have extensive layoff and recall rights, according to seniority, as provided by the State Universities Civil Service Act. Tr. 180. Civil Service Extra Help and Administrative Professional employees have no layoff or recall rights. Tr. 180; Univ. Ex. 13. Employees in the Faculty Associate category have no layoff or recall rights either, but should the University find it necessary to layoff such employees, it would apply the nonrenewal/discharge process as detailed in the faculty handbook. Tr. 180; Un. Ex. 10. Civil Service, Faculty Associate, and Administrative Professional employees participate in the State Universities Retirement System (SURS); Civil Service Extra Help employees do not participate in SURS. Tr. 190-91.

IV. DISCUSSION AND ANALYSIS

A. The Assistant Librarian title

At the end of the 2023-2024 school year, after the incumbent left the Assistant Librarian position at Metcalf, the University ended the title, planning to replace it with the Library Specialist title, which already exists and is filled at University High, and is represented in a campus-wide bargaining unit, represented by American Federation of State, County, and Municipal Employees, Council 31. Tr. 145, 155-163, 198; Univ. Ex. 7. The Union does not dispute the Assistant Librarian job classification no longer exists, and it does not allege, nor does the evidence indicate, the University eliminated the title to avoid the instant petition. Given these facts, there is no reason maintain the Assistant Librarian job title or classification in the petitioned-for unit, as it is undeniably vacant and will remain so.

B. The Joint Employer issue

The University contends the Union's petition is fatally flawed, as it failed to name the HILIA board as a joint employer of the HILIA employees. Additionally, the University asserts HILIA is not an employer of the non-HILIA employees in the Laboratory Schools, and therefore, it would be short-sighted to permit a bargaining unit where neither the HILIA board, nor the University is the employer of all the persons therein. The University proposes instead, a unit of HILIA employees and a unit of Laboratory Schools employees. Tr. 261-62, 285. The Union asserts, as configured, the petitioned-for unit is proper, as the University is the employer of both HILIA and non-HILIA Laboratory Schools employees.

The Illinois Supreme Court determined the test for the existence of a joint employer relationship as follows: whether "two or more employers exert significant control over the same employees—where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment." Relevant factors include the putative joint

employer's role in "hiring and firing; promotions and demotions; setting wages, work hours, and other terms and conditions of employment; discipline; and actual day-to-day supervision and direction of employees on the job." Orenic, et al. v. Illinois State Labor Relations Board, 127 Ill. 2d 453, 465-66, 537 N.E.2d 784, 794-95 (1989)(citations omitted).

Whether an entity is an employer is dependent on the extent it is necessary to an effective collective bargaining relationship. Village of Winfield v. Illinois State Labor Relations Board, 176 Ill. 2d 54, 678 N.E.2d 1041 (1997); American Federation of State, County, and Municipal Employees, Council 31 v. Illinois Educational Labor Relations Board, 197 Ill. App. 3d 521, 554 N.E.2d 476 (4th Dist. 1990).

The University employs and pays the salaries and benefits of the HILIA teachers and staff, and Regional Office of Education 17, through funding provided by its member districts and the State of Illinois, reimburses the University for the salaries paid HILIA teachers and staff, and other expenses incurred in providing their services, such as the purchase of necessary equipment or outlays for required remodeling, but does not reimburse for the cost of benefits. Jones is both an associate dean of the University's College of Education and director of the Laboratory Schools. Jones reports ultimately to the University president. Kendall, the HILIA director, is a University employee and reports directly to Jones. Although the HILIA board authorizes Kendall to create positions and post notices for candidates, it has no role in selecting the particular applicant for hire. Instead, Kendall and Jones have that authority. Likewise, the HILIA board has no role in the discipline or discharge of HILIA employees. Overall, the HILIA board's role is very limited—it meets once a month to review and approve invoices and expenses associated with its services, and to ensure the program's objectives are met. The HILIA board determines the cost member districts will pay for services for their students, and annually, it reviews and approves Kendall's budget for the program.

The evidence indicates neither Regional Office of Education 17, nor the HILIA board exercise control over the essential terms and conditions of employment for the HILIA employees. Instead, as noted above, the University, through Kendall and Jones, have an exclusive role in hiring, discipline, actual day-to-day supervision and direction of employees on the job, and determining salary and benefits. Although, as the University asserts, HILIA constitutes a separate legal entity under the school code, and presumably Regional Office of Education 17 is as well, that particular status has no bearing on whether either constitute "employers" within the meaning of the Act. Pursuant to the agreement between the University and the Regional Office of Education 17, creating the HILIA program, the Regional Office is entitled to know the identities of the HILIA program's employees and is permitted to determine the rate at which it will reimburse the University, but it does not allow for a role in determining the actual salary, benefits, or personnel policies for such employees, or in their hiring, promotion, discipline or discharge. The record is clear, the University is the sole employer of the HILIA employees, as neither

the Regional Office, nor the HILIA board exert any relevant control over the HILIA employees, and thus, neither is necessary to an effective collective bargaining relationship.

C. The Appropriate Unit issue

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.

Herein, the University asserts the proposed bargaining unit is inappropriate because it seeks to combine four categories of employees—Administrative Professional, Faculty Associate, Civil Service, and Civil Service Extra Help. In support of its position, the University notes various civil service statutes and regulations apply to the two categories of such employees, the University's faculty handbook governs the faculty associates, and different University policies attach to each class of employee, and thus, for each class, the terms and conditions of employment are sufficiently dissimilar eliminate the existence of a cohesive community of interest among the petitioned-for employees.

Indeed, as the University contends and the record indicates, the employment of each of the four categories of personnel petitioned for is governed by different policies and procedures, however, the Act considers a broader array of factors in determining whether the unit sought is appropriate. The "employee skills and functions, degree of functional integration, interchangeability and contact among employees" factor generally favors the petitioned-for unit. The record indicates the Laboratory Schools faculty associates regularly interact and work with the teacher aides, program coordinators, and occasionally, with the nurse. When one or more HILIA students are in a general education class, the faculty associate teaching the class will have substantial contact with HILIA staff. HILIA faculty associates, interpreters for the deaf and hard of hearing, and/or special education paraprofessionals assist the HILIA student or students during the class itself and will consult with the non-HILIA faculty associate with regard to their own understanding of the concepts being taught and the terminology being used, overall student progress, and creation of learning aids. Likewise, interpreters and special education paraprofessionals will also assist students with visual and hearing impairments, in gym classes and at lunch, which is overseen by Gault. Apart from interactions regarding specific students, Laboratory School faculty associates and HILIA faculty associates collaborate on grade level progression, serve on various committees and teams together, and have contact at general faculty meetings, active shooter trainings and other training classes, professional development sessions, and

informally, in school hallways. HILIA faculty associates regularly consult with, or require assistance from, interpreters for the deaf and hard of hearing and special education paraprofessionals who understand and are able to prepare materials in Braille. Houghton, as a substitute teacher and speech language pathologist, has the same contacts and interactions as those for whom she fills-in. Welter, on the other hand, in her roles as a part-time yearbook editor, and ticket taker at school events, would appear to have only fleeting contact, at most, with other unit employees. Although there is some interchangeability among unit employees, it is not universal, given many of them utilize specialized skills and training in their daily tasks. However, the degree of functional integration within the unit is very high, given every title therein is involved with ensuring the students entrusted to them learn and progress to the greatest extent possible.

The "common supervision, wages, hours and other working conditions" factor is mixed, but overall favors the petitioned-for unit. Markert supervises the University High personnel, Bergmann supervises the Metcalf personnel, and Kendall supervises the HILIA personnel. Markert, Bergmann, and Kendall each report to Jones. The hours of work for nearly everyone in the petitioned-for unit are 8:00 a.m. to 4:30 p.m., Monday through Friday, 37.5 hours per week. All of the employees in the unit work in similar school settings, with most at University High and Metcalf, and the HILIA itinerants in member district schools. However, aspects of the employment of each of the four categories of employees petitioned differ due to the policies and procedures applicable to each category.

The "historical pattern of recognition" factor is indeterminate, as none of the petitioned-for titles are represented, or have 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 strong evidence of employee support for it. The unit as petitioned for by the Union, with the exception of the Assistant Librarian title, is therefore appropriate for purposes of collective bargaining and is as follows:

Included: All persons employed full-time or regularly employed part-time at Illinois State University Laboratory Schools, including in its Heart of Illinois Low Incidence Association (HILIA) program, in the following job titles or classifications: Faculty Associate; Program Assistant; Program Coordinator; Administrative Nurse I; Special Education Paraprofessional; Specialist Education Audiologist; Senior Interpreter for the Deaf and Hard of Hearing; Interpreter for the Deaf and Hard of Hearing; Teacher Aide; Extra Help Semi-Professional; Extra Help Skilled.

Excluded: All persons employed in the following job titles or classifications: Director of Laboratory Schools; University High School Principal; Thomas Metcalf School Principal; Assistant Principal University High; Assistant Principal Thomas Metcalf School; Director of Athletics and Activities; Director University High School Activities. All supervisory, managerial, confidential, and/or short-term employees as defined in Section 2 of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, *et seq.*

V. CONCLUSIONS OF LAW

The Assistant Librarian job classification no longer exists, therefore it is improper to include it in the petitioned-for unit. The University is the sole employer of the petitioned-for employees. 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 12th day of March, 2025.

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

John F. Brosnan

**John F. Brosnan
Administrative Law Judge**