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IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

BOARD OF TRUSTEES OF ILLINOIS STATE UNIVERSITY,	)	Petition for Review of an Order of the Illinois Educational Labor Relations Board
Petitioner,	)	
v.	)	
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD and LAB SCHOOL EDUCATION ASSOCIATION, IEA-NEA,	)	Case No. 2024-RC-0013-C
Respondents.	)	

STATE RESPONDENT ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD'S RESPONSE BRIEF

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000

Attorneys for State Respondent

DAVID E. NEUMEISTER
ARDC No. 6207454
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-2129 (office)
(312) 848-6474 (cell)
CivilAppeals@ilag.gov (primary)
david.neumeister@ilag.gov (secondary)

ORAL ARGUMENT REQUESTED

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NATURE OF THE ACTION

Respondent Lab School Education Association, IEA-NEA ("Union") filed a petition with the Illinois Educational Labor Relations Board ("Board") under the Illinois Educational Labor Relations Act ("Act"), 115 ILCS 5/1 *et seq.* (2024), seeking to represent approximately 123 Illinois State University ("University") employees in the University's Laboratory Schools, including those who worked in the Heart of Illinois Low Incidence Association program ("HILIA"). The University objected to the petition on the grounds that 22 of those employees provided services to HILIA only and should be excluded from that proposed bargaining unit because HILIA and the University were their joint employers.[1] That objection triggered an administrative hearing before a Board administrative law judge ("ALJ"), who received evidence and issued a recommended opinion and order concluding that the University was the HILIA employees' sole employer and approving the Union's proposed bargaining unit. The Board affirmed the ALJ's decision and ordered its Director to process the Union's petition. The Director certified the Union as the exclusive bargaining representative of those 123 employees. The University filed a petition for direct administrative review of the Board's decision in this court.

[1] Those employees who provided services to HILIA were employees of the University, E4-7, E42, but are referred to in this brief as "the HILIA employees" for ease of reference.

ISSUE PRESENTED FOR REVIEW

Whether the Board's determination that the University and HILIA were not the HILIA employees' joint employers, and that the University was their sole employer, was not clearly erroneous.

JURISDICTION

This court has jurisdiction over petitioner's direct administrative review action under section 7(d) of the Act, 115 ILCS 5/7(d) (2024), and Ill. Sup. Ct. R. 335. The Board's Director certified the Union's petition on May 30, 2025, and served the certification on the parties that same day. C90-93.[2] On July 3, 2025, the University filed a petition for direct administrative review of the Board's decision with this court, *see* PT Br. A21-24, which was timely under section 7(d) of the Act because it was filed within 35 days of service of the Director's certification and final order, *see* 115 ILCS 5/7(d) (2024).

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[2] The common law record is cited as "C _____," the report of proceedings is cited as "R ________," the volume of exhibits is cited as "E _______," petitioner's opening brief is cited as PT Br. ________," and the HILIA board's *amicus* brief is cited as "AC Br. _______."

STATEMENT OF FACTS

Background

The University is an educational employer within the meaning of section 2(a) of the Act, 115 ILCS 5/2(a) (2024), and the Union is a labor organization under section 2(c) of the Act, 115 ILCS 5/2(c) (2024). C79. Within its College of Education, the University operated two laboratory schools; the Thomas Metcalf School for pre-kindergarten through eighth grade, and the University High School ("U-High") for ninth through twelfth grades. C79; R35, R67-68. HILIA is a public educational program founded by six government agencies covering four counties and more than 30 school districts within those counties to serve students with hearing and vision disabilities. R75-76; E4-7.

The Union petitioned the Board to represent approximately 123 employees, 22 of whom provided services to HILIA students, in a single bargaining unit. C3-4; R60, R78, R103, R110; E154. Those 22 HILIA employees were categorized as either faculty associates (17), civil service employees (4), or administrative professionals (1). E154; PT Br. 6. The University objected to the petition on the grounds that those 22 employees should be in a separate bargaining unit, contending that they were jointly employed by the University and HILIA rather than solely employed by the University. C33-36, C72.

The Administrative Proceedings

The Administrative Hearing

The University's objection triggered an administrative hearing before a Board ALJ. C72. U-High principal Andrea Markert, R28-71, R193-95, R335-38, and Lisa Kendall, the University employee who directed HILIA's operations, testified at the hearing, R73-136, R318-34, and the parties submitted numerous exhibits, E1-3. That evidence established the following facts.

Markert and Carmen Bergmann, Metcalf's principal, reported directly to Anthony Jones, an associate dean in the University's College of Education who served as the Lab Schools's Director. R31-32, R34. Jones reported to the dean of the College of Education, who reported to the University's Provost, who in turn reported to the University President. R31-32, R60; E149. Together, Markert and Bergmann, both University employees, directly supervised all of U-High's and Metcalf's employees, and indirectly supervised the HILIA employees who worked in those schools. R28-30, R60, R63, R75, R298; E10-19. Kendall, who directed HILIA's operations, also reported directly to Jones. R43, R73-74, R108, R326.

HILIA was organized under section 10-22.31a of the Illinois School Code, 105 ILCS 5/10-22.31a (2024), to serve students with hearing and vision disabilities, R41, R75-77; E4-7. Because few students in any one of the covered school districts needed those services, the University and Regional Office of

Education 17 ("ROE 17"), which covered DeWitt, Logan, Livingston, and McLean counties, created HILIA to collectively serve students in that region. R69, R75-77, R80, R318; E4-7. HILIA was governed by a five-person board, which included Jones and a special education director from each of the four partner districts. R80; E17-19.

The University, HILIA board, and those districts operated under an Educational Services Agreement ("ESA"). R85; E4-7. Under the ESA, the University "assume[d] responsibility and authority for administration of the educational programs[,]" and "[i]n cooperation with the directors of special education from the participating districts . . . develop[ed] an appropriate educational program for the pupils enrolled in the Laboratory Schools." E6. All teachers' instruction was based on HILIA students' individual education plan goals "and follow[ed] Laboratory Schools's curriculum objectives." *Id.* The University and the HILIA board were independent contractors in relation to each other, and the University was to: provide HILIA with all necessary resources including certified and non-certified personnel; and ensure that staff met all certification requirements. E4-6.

The University maintained a handbook for all faculty associates stating that "[a]ll HILIA staff are employees of Illinois State University." E42. The handbook addressed terms and conditions of employment for those employees including hiring, compensation, benefits, absences, probationary periods, discipline and termination, performance evaluations, work schedules, layoffs, and additional compensation opportunities. E37-86, E189-231. It stated that the Lab Schools's superintendent, the Dean of the University's College of Education, the University's Vice President and Provost, and the University President made final salary decisions for all employees, including the HILIA employees. E47. University salary studies included the HILIA employees. R98. The HILIA and non-HILIA employees in the proposed bargaining unit served on the same committees and teams, attended the same general faculty meetings, and participated in training activities together. R94-95, R271-72, R275-76, R281, R304.

The email addresses for all Lab Schools employees were associated with the University: *e.g.*, "@ilstu.edu," "@Metcalf.illinoisstate.edu," and "@uhigh.illinoisstate.edu." R113-14. The parties did not submit record does not contain job descriptions specific to the HILIA employees, but the job descriptions for special education interpreters, paraprofessionals, and audiologists affiliated with HILIA specified that they reported "to [the] HILIA [c]oordinator [Kendall], who report[ed] to the Director of the Laboratory Schools [Jones]," with further reporting up the chain of command to other University officials. E18, E21, E29, E32. The handbook also included other terms and conditions of University employment that applied to HILIA employees, such as standards of conduct, professional expectations, discipline and dismissal, and grievance procedures. E47-54, E59-69, E72-74, E84-86. University employees Sarah Hlade, who was affiliated with HILIA, R215-19, and Andrew Goveia and Markert, who were not affiliated with HILIA, R283, R306-07, all testified that they preferred to be included in one bargaining unit.

The University further maintained policies and procedures for the other HILIA employee categories — administrative professionals and civil service employees. E154, E189-232; PT Br. 6. Those policies covered topics including salary adjustments, E189, vacation, E192, employment for teaching purposes, E196, performance appraisals, E199, E216, non-reappointment, E202, scheduling, E205, E228, layoffs, E219, and corrective behavior, E222. They did not distinguish between HILIA and other University employees. E189-232.

Kendall directed HILIA's day-to-day operations for the University. R43, R45, R51, R73-74, R103-04, R108, R113, R116-17; E4-7. Each year, she submitted a proposed budget to the HILIA board for approval, R98-100, and the HILIA board met monthly to approve other expenses and review the status of the program's objectives, R81, R225.

The HILIA board authorized Kendall to create positions and post notices for those openings, but she and Jones had sole hiring authority. R116-17, R329-31. The HILIA board had no role in hiring, R329, and Kendall supervised the HILIA employees, R60, R103. The University paid the HILIA and ROE 17 employees' salaries and benefits. R81-82, R85, R100, R113-17, R194-95, R330-31; E12-16, E146-48. It was reimbursed for those salaries and other expenses, but not for the cost of benefits. R81-82, R85, R100, R113-17, R194-95, R330-31; E12-16, E146-48. There was no evidence that the HILIA board maintained its own policies and procedures separate from the University.

University pay raises for the Lab Schools included the HILIA employees, and Kendall notified HILIA's board of such increases for inclusion in its budget. R99. HILIA's civil services employees were covered by the State University Civil Service Act, 110 ILCS 70/36d(3) (2024), and the terms and conditions of their employment could be set and modified only by the State University Civil Service System. R100-01; E19, E22, E33, E148, E189-232. The Lab Schools received funding from multiple sources, including the Illinois State Board of Education, the Illinois Board of Higher Education, and the University itself. R36, R42.

HILIA provided instruction to students either at one of the lab schools, or in a student's home district. R69, R86, R98, R291, R319. Some instruction at the schools took place in classes with only HILIA students, and some occurred in individual settings with a teacher and the student. R87, R203, R321-22. Some HILIA students also attended general lab school classes accompanied by a HILIA teacher, interpreter, or special education paraprofessional. R205-07, R213-14. In those situations, the general class teacher had detailed contact with the relevant HILIA employee. R206-07, R271-72, R278-80, R299, R303, R321-22.

Kendall had authority to discipline or discharge lab school employees. R116-17. She followed the discipline and discharge process established by the University's Human Resources Department and set out in its faculty handbook, R331; E65, or as otherwise established by the State University Civil Service Act, *see* 110 ILCS 70/36o (2024), E222-23. Kendall, and occasionally Markert, evaluated all HILIA employees according to the University's faculty handbook and other University policies. R44, R103; E51, E199-200, E216-17.

The post-hearing briefs

The Union filed a post-hearing brief supporting its proposed bargaining unit, arguing that the evidence supported a finding that the University and HILIA were not the HILIA employees' joint employers. SUPC3-66. The University filed a post-hearing brief advocating joint employer status. SUPC67-94.

The University contended that 5 of the 22 positions associated with HILIA should be excluded from the proposed bargaining unit because one no longer existed and the other four were civil service positions. SUPC81-84. The University also asserted that there were other defects with the proposed bargaining unit based on employee classifications, and that HILIA was a separate legal entity that should be recognized as a joint employer. SUPC84-87. In support, the University argued that HILIA was an entity created under the Illinois School Code by its member districts and was recognized as a public employer that was governed by those districts, and it maintained that HILIA should have been recognized as a joint employer along with the University because of the HILIA board's oversight of funding and hiring. SUPC85-86. Combining the HILIA employees with other University employees into the same unit, the University asserted, would be inappropriate because the two groups lacked "a shared community of interest" due to the various job classifications involved. SUPC87-93.

The Union argued that the ESA, rather than the School Code, governed the scope of the HILIA board's authority over the employees in question and vested supervisory authority with the University. C54. The ESA, the Union stated, did not limit the University's hiring, supervision, and compensation of the HILIA employees. C55. Rather, it required only that the HILIA board be told who those employees were and the rate at which HILIA would reimburse the University for their salaries through an approved budget. C54. The Union argued that the HILIA board's ability to approve reimbursement for those expenses was insufficient to establish control over the HILIA employees because the University hired, managed, and paid them, and it could hire and pay more than what the HILIA board agreed to reimburse. *Id*.

The Union continued that the University overemphasized the HILIA board's funding role because the University was required to provide services to the low incidence students regardless of any funding from HILIA. C54-55. The Union asserted that, according to the University itself, HILIA's funding was only meant to offset the member districts' costs for HILIA's services, including employee salaries. *Id*. The Union pointed out that the University set salaries and controlled the other factors that are used to determine the existence of joint employers under the test articulated in *Orenic v. Ill. State Lab. Rels. Bd.*, 127 Ill. 2d 453, 465-66 (1989). C55-56.

The ALJ's decision

The ALJ issued a recommended decision and order determining that the University was the sole employer of the employees in the petition, and that the University and HILIA thus were not joint employers, and approving the Union's proposed bargaining unit, including the HILIA employees. C20-31. The ALJ, citing *Orenic*, 127 Ill. 2d at 465-66 and *Vill. of Winfield v. Ill. State Lab. Rels. Bd.*, 176 Ill. 2d 54 (1997), identified the joint employer test as asking whether the University and HILIA each exerted significant control over the HILIA employees by sharing or co-determining their essential terms and conditions of employment, considering their roles in hiring and firing, promotions and demotions, setting hours and wages, imposing discipline, and supervising and directing daily activity. C26-27.

The ALJ noted that several facts were especially pertinent to that analysis. C27-28. Specifically, the University employed the HILIA employees and paid their salaries and benefits; Jones, who was the Lab Schools's Director, was a University employee who reported to its President; and Kendall, who was HILIA's director, was a University employee who reported directly to Jones. C27. Although the HILIA board authorized Kendall to create positions and post notices for candidates, it had no role in hiring, managing, or firing HILIA employees. *Id*. Rather, the ALJ continued, "the HILIA board's role [was] very limited" to approving invoices, expenses, member districts' costs for services, budgets, and program objectives. C27. Hiring authority, the ALJ emphasized, rested with Kendall and Jones. *Id*.

Based on those facts, the ALJ determined that "neither Regional Office of Education 17, nor HILIA's board exercise[d] control over the essential terms and conditions of employment" for the HILIA employees. C27-28. Although HILIA was a separate legal entity from the University, that status had no bearing on their joint employer status. C27. Neither HILIA nor the ROE had "a role in determining the actual salary, benefits, or personnel policies for [the HILIA] employees, or in their hiring, promotion, discipline or discharge." *Id*. The record, the ALJ continued, was "clear [that] the University [was] the sole employer of the HILIA employees, as neither the Regional Office, nor the HILIA board exert[ed] any relevant control over the HILIA employees," and so "neither is necessary to an effective collective bargaining relationship." C28.

The ALJ continued that the proposed bargaining unit was appropriate under the governing factors. *Id*. The fact that the HILIA employees came from four different permitted personnel categories, the ALJ explained, was irrelevant because "the Act considers a broader array of factors in determining whether the unit sought is appropriate." *Id*. Lab School (*i.e.*, University) staff, moreover, collaborated with HILIA on numerous issues. C28-29. The "common supervision, wages, hours and other working conditions" factor favored the proposed bargaining unit because Markert, Bergmann, and Kendall — all University employees — supervised all Lab Schools personnel and reported to Jones, and all Lab Schools employees worked in similar settings with uniform schedules. C29. The "desires of the employees" factor also favored that unit because the evidence showed "strong . . . employee support for it." *Id*.

The ALJ therefore included the HILIA employees, but for one eliminated position, in the bargaining unit. C29-30. He concluded that the University was the petitioned-for employees' sole employer and that the Union was their appropriate representative under section 7(a) of the Act. C30.

The University's exceptions

The University filed exceptions to the ALJ's decision. C33-49. It claimed that the ALJ placed "undue reliance" on the "day-to-day direction, supervision, hiring, and discipline of HILIA employees" while "ignoring [the] HILIA governing [B]oard's significant role" in those activities. C35-36. Rather than relying solely on the "joint employer" test in *Orenic*, the University argued, the ALJ should have included the factors discussed in *Cnty. of Kane v. Ill. State Lab. Rel. Bd.*, 165 Ill. App. 3d 614 (2d Dist. 1988) and *City of Rockford v. Ill. State Lab. Rel. Bd.*, 158 Ill. App. 3d 166 (2d Dist. 1987). C42-43. Those cases, according to the University, also considered the authority to tax, raise funds, grant financing, and the "extent to which an entity is necessary to create an effective bargaining relationship." *Id*. The University maintained that the ALJ should have placed more emphasis on the HILIA board's role as a funding source for HILIA-affiliated positions even if it had no control over day-to-day operations. C45.

The Union responded that the focus should remain on the factors articulated in *Orenic* as to whether an employer "exert[s] significant control over the same employees." C52-68. It also argued that the appellate court decisions on which the University relied were distinguishable. C58-63.

The Board's Final Administrative Decision

The Board issued an opinion and order adopting the ALJ's findings of fact and recommendations and agreeing with the ALJ's analysis under the *Orenic* factors. C72-77. The Board emphasized that the ALJ's reliance on *Orenic* was proper because that decision was binding precedent, and it rejected the University's complaint that the ALJ improperly minimized the HILIA board's involvement because similar factors were also discounted in *Orenic*. C73. And the HILIA board's funding role, the Board explained, did "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." C74.

Accordingly, the Board affirmed the ALJ's decision. C74, C77. The University brought this administrative review action. PT Br. A21-24.

ARGUMENT

I. This court reviews the Board's decision under the highly deferential clear error standard of review.

The Board's decision is reviewable under the Administrative Review Law, 5 ILCS 315/11(e) (2024), and the scope of judicial review extends to all questions of law and fact presented by the administrative record. *Am. Fed'n of State, Cnty., & Mun. Emps., Council 31 v. Ill. State Lab. Rels. Bd.*, 216 Ill. 2d 569, 577 (2005). The applicable standard of review depends on whether the question presented is one of fact, law, or a mixed question of fact and law. *AFM Messenger Serv., Inc. v. Dep't of Emp. Sec.*, 198 Ill. 2d 380, 390 (2001).

Questions of law are reviewed *de novo*. *Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 216 Ill. 2d at 577. An agency's findings of fact are deemed to be *prima facie* true and correct and factual findings will not be reversed unless they are against the manifest weight of the evidence. *Id.* Mixed questions of law and fact are "questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard." *Id.*

The question of whether HILIA was a joint employer under the Act presented a mixed question of law and fact because it required the Board to apply facts about the level of control the University and HILIA exerted over the petitioned-for employees to the governing legal standard. *See* C72-77. The Board's determination of whether HILIA was a joint employer under the Act therefore will be reversed only if it is clearly erroneous. *See Am. Fed'n of*

State, Cnty., & Mun. Emps., Council 31, 216 Ill. 2d at 577. A decision is clearly erroneous only when the reviewing court is left with the definite and firm conviction that a mistake has been made. *Id.* at 577-78. In reviewing such a determination, a court will not reevaluate the Board's credibility rulings, resolve evidentiary conflicts anew, or substitute its judgment for that of the Board. *Woods v. Ill. Dep't of Emp. Sec.*, 2012 IL App (1st) 101639, ¶ 16.

II. The Board did not clearly err in determining that the University and HILIA were not joint employers.

The University's only basis for challenging the Board's decision is its argument that the University and HILIA were joint employers of the HILIA employees. *See* PT Br. 8-19. The Board did not clearly err by determining that they were not joint employers because only the University exerted significant control over the HILIA employees.

The test for determining whether entities are joint employers in the collective bargaining context is whether two or more of them exert significant control over the same employees. *See Orenic v. Ill. State Lab. Rels. Bd.*, 127 Ill. 2d 453, 474 (1989). To be joint employers, the evidence must show that those entities share or co-determine matters governing the essential terms and conditions of employment. *Id.* Relevant factors to consider 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. *Id.* at 475. An important consideration is the extent to which the putative joint employer is necessary to create an effective bargaining relationship. *Vill. of Winfield v. Ill. State Lab. Rels. Bd.*, 176 Ill. 2d 54, 60 (1997).

In this case, the Board appropriately analyzed whether the University and HILIA shared or co-determined those matters governing the essential terms and conditions of employment. C72-77; *see Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 216 Ill. 2d at 579. The essential element in that analysis is whether HILIA's control over the HILIA employees was direct and immediate. *See id.* The Board did not clearly err by determining that it was not.

A. Only the University exerted significant control over the HILIA employees.

The Board did not clearly err by determining that only the University exerted significant control over the HILIA employees, such that the University and HILIA were not joint employers. As the Board explained, an assessment of the factors identified in *Orenic* demonstrate that they weighed against joint employer status. *See* C26-29, C72-76.

To start, the ESA, E6-9, the University's employee handbook, E37-86, and its other policies and procedures, E189-232, showed that each factor was under the University's sole control. The ESA specified that: the University "assume[d] responsibility and authority for the administration of the educational programs" at issue; teachers' instruction would "follow [the] Laboratory School's curriculum objectives as appropriate"; and in cooperation with officials from the four participating districts, "the University will develop an appropriate educational program" for Lab School students. E6. Those clauses did not mention or vest any authority in HILIA. *See id.*

As to the handbook, it stated that "[a]ll HILIA [faculty and] staff are employees of Illinois State University," E42, and addressed terms and conditions of employment for all University faculty and staff, including hiring, compensation, benefits, absences, probationary periods, discipline and termination, performance evaluations, work schedules, layoffs, and additional compensation opportunities, E37-86, E47-54, E59-69, E72-74, E84-86, E189-231. The handbook did not include any exception for HILIA employees, *see id.*, and it vested Jones and his University superiors with authority over salaries for all faculty and staff, E47. The University's other policy and procedure documents covered those same subjects as to employees in the other relevant categories, again without carving out the HILIA employees. E189, E192, E196, E199, E202, E205, E216, E222, E228.

Other evidence confirmed that those written policies and procedures, which covered all University faculty and staff, including the HILIA employees, were applied in practice. Kendall testified that she, with Jones's approval, was solely authorized to hire and fire HILIA employees, and HILIA's board had no role in that process. C81; R115-16, R329-31. Similarly, Kendall and Jones, rather than the HILIA board, could promote, demote, and discipline those employees, according to her unrebutted testimony. C80-81; R115-17, R328-31; E65. Kendall followed the University's procedures in performing those duties, R331; E65, and HILIA's board did not participate in those decisions, R330-31. Along with Markert, Kendall evaluated the HILIA employees according to the University's handbook and other policies. R44, R103; E51, E199-200, E216-17. In fact, there was no evidence that the HILIA board maintained any of its own employment policies for Kendall, or anyone else, to enforce. And contrary to the University's statement, PT Br. 5, Kendall did not "report" to the HILIA board. Although she communicated with the HILIA board about relevant issues, she reported to Jones. R43, R73-74.

Jones, as the Lab Schools's superintendent, finally decided salaries. E47. And Kendall explained that the University implemented raises based on salary studies that included the HILIA employees before she submitted proposed budgets to HILIA's board. R98. The evidence thus showed that the University decided the HILIA employees' salaries. R116; *see Marconi v. Chi. Hts. Police Dep't*, 225 Ill. 2d 497, 534 (2006) (factual finding not against manifest weight of evidence if supported by any evidence in record). Indeed, according to Kendall, the University controlled compensation for the HILIA employees because its payroll department ultimately approved and signed the checks. R114. And while the HILIA employees' salaries had to fit within the University's budget, R194, the University did not advise the HILIA board of the HILIA employees' identities and the rate at which HILIA would reimburse the University for their salaries until after hiring had occurred. C54. The Board therefore did not clearly err by determining that the HILIA board's ability to approve those reimbursement expenses did not rise to the level of setting salaries and was not significant enough to demonstrate that it was a joint employer when the University hired, managed, and paid those employees, and could hire and pay more than the HILIA board agreed to reimburse. *Id*.

As to the HILIA employees' work hours and other terms and conditions of employment, the University had exclusive control because it operated the program "day-to-day through Kendall." C21-22, C27, C72-74. And Kendall testified that she was a University employee, and she never claimed to work for HILIA's board. R74, R108-09. The HILIA employees' job descriptions, moreover, all stated that they reported to University officials. E18, E21, E29, E32.

Also, the University, through Kendall and Jones, hired, supervised, paid, and disciplined the HILIA employees, R43, R60, R73-74, R103, R108; C86, and they were all subject to University personnel policies, E37-86, E198-232. Although those policies differed slightly between classifications, the Board recognized the similarity of the employees' skills and roles, integration into the same or similar functions, and interactions and coordination with each other in their respective roles. C86.

In sum, the Board appropriately applied the *Orenic* factors to the facts of this case, and it did not clearly err by determining that the University and HILIA were not joint employers of the HILIA employees and that those employees should be included in the Union's proposed bargaining unit. C86-

87. *See Am. Fed'n of State, Cnty. and Mun. Emps., Council 31*, 216 Ill. 2d 569, 581-82 (2005) (determination that Department of Corrections was not joint employer with vendor was not clearly erroneous where vendor maintained control over daily terms and conditions of employment and Department did not exert meaningful control over vendor's employees).

B. The University's arguments in favor of reversal lack merit.

The University argues on appeal that the Board clearly erred by determining that HILIA was not a joint employer of the HILIA employees for three reasons. *See* PT Br. 9-19. But each argument fails to overcome the evidence showing that only the University exerted sufficient control over those employees to qualify as an employer for purposes of collective bargaining or to demonstrate that the Board's decision was clearly erroneous.

1. The Board did not clearly err by determining that HILIA did not exert significant control over the HILIA employees through its budgetary authority.

The University contends that the Board clearly erred because HILIA exerted substantial control over the HILIA employees through its role in funding the HILIA program. PT Br. 10-14. It maintains that HILIA's budget dictated the number and category of HILIA employees that were hired and retained, as well those employees' salaries. *Id.* The University, however, improperly focuses on that one factor to the exclusion of all others, while also overstating its role in funding the HILIA employees.

The only *Orenic* factor that the University discusses in its opening brief is the HILIA board's approval of an annual budget for its contributions to the HILIA program. PT Br. 9-14. In doing so, the University entirely overlooks the other *Orenic* factors, which include hiring and firing; promotions and demotions; setting work hours, and other terms and conditions of employment; discipline; and actual day-to-day supervision and direction of employees on the job. *See Orenic*, 127 Ill. 2d at 475. The Board, and the ALJ, considered those factors, C26-28, 73, but the University discusses none of them, PT Br. 9-14. As the ALJ explained, and the University does not dispute, the University had sole control over setting salaries, hiring, firing, promotion, demotion, discipline, work hours, and daily supervision as to the HILIA employees. C26-28. The HILIA board's lack of involvement in those matters supports the Board's determination that the University was the HILIA employees' sole employer.

Consideration of those factors, especially as set forth in the ESA, also defeats several of the HILIA board's claims in its *amicus* brief. First, the HILIA board is not "legally and operationally responsible for the educational services provided by" the HILIA employees. AC Br. 2. That responsibility fell to Kendall and Jones. R73-74, R99, R103, R108, R116-17, R331. Similarly, the HILIA board's concern that a number of "operational adjustment[s]" could create joint employer status, AC Br. 7, is unfounded, as there was no evidence of any potential change in the operational status. Like the University, the

HILIA board focuses solely on the asserted impact to its budgetary process to the exclusion of any other aspect of its operations or the *Orenic* factors. *Id.* And because the HILIA board does not exert significant control over the petitioned-for employees, its stated concern that it could be held liable for interfering with the unit members' bargaining rights, *see id.* at 6, lacks a valid foundation.

Rather than engage with the *Orenic* factors, the University argues that the Board should have ignored them and have instead concluded that the evidence of funding, by itself, established that HILIA was a joint employer. PT Br. 13. But in *Orenic*, the Court identified several "[r]elevant factors" that must be considered when determining joint employer status for collective bargaining purposes, and it did not state that any one factor was outcome determinative. *Orenic*, 127 Ill. 2d at 474-75. The University's argument that evidence of funding renders all other factors irrelevant, *see* PT Br. 13, thus conflicts with the joint employer test that the Court articulated in *Orenic*, whereas the Board's recognition that funding of compensation alone could not establish the joint employer relationship aligns with the Court's multi-factor test, *see* C73. As the Board explained, disregarding the other *Orenic* factors "would deviate from established binding legal precedent." *Id.* Moreover, while the University asserts that the Court in *Orenic* would have held that the counties were joint employers based solely on funding but for constitutional concerns, PT Br. 13, it overlooks that the Court concluded that the counties were not joint employers before it discussed those constitutional concerns and stated that those considerations merely "strengthen[ed]" its conclusion, *Orenic*, 127 Ill. 2d at 476. The Board thus appropriately based its decision on the *Orenic* factors, and the University's argument that the Board should have disregarded them fails to show clear error.

The University's suggestion that the Board incorrectly considered the *Orenic* factors with respect to the entire bargaining unit, rather than just the HILIA employees, is also misguided. *See* PT Br. 8-9. The Board, and the ALJ whose decision it affirmed, expressly applied the *Orenic* factors to specific facts about the HILIA employees, discussing the "day-to-day" direction, supervision, hiring, and discipline of those employees, as well as HILIA's funding of that program and control over its budget. C26-28, C72-74.

In addition, the University overstates HILIA's role when claiming that HILIA "dictates the wages and number of HILIA employees." PT Br. 11. As explained, the budget the HILIA board approved dictated only the amount that HILIA would reimburse the University for those employees' salaries. C54; R98, R114, R116, R194. It did not include the cost of benefits such as health insurance, dental or vision insurance, and paid time off. R81-82, R85, R100. The University also could pay those employees more than the reimbursement amount, and any decision on that matter would be driven by the University's own budgetary constraints rather than HILIA's. The evidence of HILIA's funding authority therefore does not support the University's characterization of the scope of HILIA's authority.

The cases on which the University relies are inapposite for similar reasons. As the Board stated, in those cases the putative joint employers' funding activity played outsized roles compared to HILIA's role here — where it only reimbursed the University for salaries up to a certain amount. In *Cnty. of Will v. Ill. State Lab. Rels. Bd.*, 219 Ill. App. 3d 183, 184-86 (3d Dist. 1991), the joint employer provided 40 percent of the other employer's funding and approved its budget, while here there was no evidence that the HILIA board had any say in the University's budget. *See* C73-74. The court, moreover, identified other factors, in addition to funding, that supported a joint employer determination in that case. *Id.* at 187. In *Cnty. of Will v. Ill. State Lab. Rels. Bd.*, 220 Ill. App. 3d 62, 64-66 (3d Dist. 1991), the putative joint employer had exclusive control over funding of employee salaries and imposed limits on the parties in salary negotiations. *Id.* at 64-66. As explained, HILIA did not have such far-reaching power here.

In sum, the Board appropriately weighed all the *Orenic* factors when determining whether HILIA was a joint employer of the HILIA employees. Its decision that HILIA was not a joint employer solely because it could control the amount it would reimburse the University for HILIA employees' salaries was not clearly erroneous.

2. The University forfeited any argument that Kendall acted as the HILIA board's agent by failing to present that argument before the Board.

The University next argues that HILIA exerted significant control over the HILIA employees because Kendall acted as the HILIA board's agent despite being a University employee. PT Br. 14-17. The University, however, has forfeited that argument by not raising it during the administrative proceedings, either in its post-hearing brief to the ALJ, SUPC67-94, or in its exceptions to the Board's final administrative decision, C33-51. As a result, neither the ALJ nor the Board addressed or considered agency issues in their decisions. *See* C26-29, C72-76.

An argument or objection that is not made in an administrative proceeding is forfeited and may not be raised for the first time on judicial review. *Shawnee Cmty. Unit Sch. Dist. No. 84 v. Ill. Prop. Tax Appeal Bd.*, 2022 IL App (5th) 190266, ¶ 74 (objection to testimony not raised at hearing or in motion to reconsider forfeited on administrative review); *Masood v. Div. of Prof. Regul. of Dep't of Fin. & Prof. Regul.*, 2023 IL App (1st) 220657, ¶¶ 50-51 (argument that agency applied incorrect legal standard not made before agency forfeited on administrative review). This court therefore should not decide this issue in the first instance and should decline to consider any such argument on appeal. *See Provena Health v. Ill. Health Facilities Planning Bd.*, 382 Ill. App. 3d 34, 49-50 (1st Dist. 2008) (party forfeited argument regarding violation of *ex parte* communication rule not raised before agency).

C. The University and HILIA need not consent to the bargaining unit because they are not joint employers.

The University further argues that, assuming the HILIA employees "are jointly employed by the University and HILIA," the Board could certify the bargaining unit only if the University and HILIA both consented to the unit. PT Br. 17-19. But the Board determined that the University and HILIA were not joint employers and, as explained, that determination was not clearly erroneous. The Board therefore had no occasion to consider whether HILIA or the University consented to the bargaining unit. The University, moreover, did not present this argument in its objections to the ALJ's recommended decision, *see* C33-49, and it has therefore forfeited this contention, *see Chi. Tchrs. Union, Loc. 1, Am. Fed'n of Tchrs, AFL-CIO v. Chi. Sch. Reform Bd. of Trs.*, 338 Ill. App. 3d 90, 103 (1st Dist. 2003) (arguments not raised before Board are forfeited).

CONCLUSION

For these reasons, State Respondent Illinois Educational Labor Relations Board requests that this court affirm the Board's judgment.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000

Attorneys for State Respondent Illinois Educational Labor Relations Board

/s/ David E. Neumeister
DAVID E. NEUMEISTER
ARDC No. 6207454
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-2129 (office)
(312) 848-7674 (cell)
CivilAppeals@ilag.gov (primary)
David.Neumeister@ilag.gov (secondary)

May 7, 2026

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Ill. Sup. Ct. R. 341(a) and (b). The length of the brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under Ill. Sup. Ct. R. 342(a), is 29 pages.

/s/ David E. Neumeister
DAVID E. NEUMEISTER
ARDC No. 6207454
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-2129 (office)
(312) 848-6474 (cell)
CivilAppeals@ilag.gov (primary)
David.Neumeister@ilag.gov (secondary)

CERTIFICATE OF FILING AND SERVICE

I certify that on May 7, 2026, I electronically filed the foregoing State Respondent Illinois Educational Labor Relations Board's Response Brief with the Clerk of the Court for the Illinois Appellate Court, Fourth Judicial District, by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

James Powers
jpowers@cbslawyers.com

Grace Vestal
gvestal@cbslawyers.com

Jamie Flahaven
jflahaven@cbslawyers.com

Sam Hensel
hensel@ask-attorneys.com

Brandon Wright
bkw@franczek.com

Rachel Domash
red@franzek.com

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ David E. Neumeister
DAVID E. NEUMEISTER
ARDC No. 6207454
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814 2129 (office)
(312) 848-6474 (cell)
CivilAppeals@ilag.gov (primary)
David.Neumeister@ilag.gov (secondary)