

Case No. 4-25-0692

**IN THE APPELLATE COURT OF ILLINOIS
FOR THE FOURTH DISTRICT**

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

PETITIONER ILLINOIS STATE UNIVERSITY’S BRIEF

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ORAL ARGUMENT REQUESTED

CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rules 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 to be appended to the brief under Rule 342(a), is 20 pages.

By: /s/ James J. Powers
James J. Powers

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NATURE OF THE ACTION

This action involves an appeal from an Order of Certification issued on May 30, 2025,¹ by the Executive Director of the Illinois Educational Labor Relations Board (“IELRB” or “Board”) in Case No. 2024-RC-0013-C. On June 25, 2024, the Lab School Education Association, IEA-NEA (“Union”) filed a petition seeking to represent approximately 123 employees who work at Illinois State University’s two Laboratory Schools.

The Board of Trustees of Illinois State University (“University”) objected to the petition, contending that the scope of the petitioned-for unit was inappropriate under the Illinois Educational Labor Relations Act (“IELRA” or “Act”) to the extent it included (without the University’s consent) approximately 22 employees who were jointly employed by the University and a separate employer called the Heart of Illinois Low Incidence Association (“HILIA”). The University contended that these 22 employees should be included in their own separate, stand-alone bargaining unit.

On May 21, 2025, the Board issued an Opinion and Order that rejected the University’s objections and directed the Board’s Executive Director to issue a final administrative order that certified the bargaining unit as described in the Union’s petition. On May 30, 2025, the Executive Director issued an Order of Certification that certified the Union as the exclusive bargaining representative of the petitioned-for employees. This appeal followed. No questions are raised on the pleadings.

¹ Citations to the common law record, hearing transcript and exhibits will be referenced, respectively, as “(C____);” “(R____);” and “(E____).” Citations to the Appendix of this Brief will be referenced as “(A-____).”

ISSUE PRESENTED FOR REVIEW

1. Whether the IELRB erred in concluding that HILIA and the University are *not* joint employers of approximately 22 HILIA staff members?
2. Whether the IELRB erred in certifying a combined bargaining unit consisting of approximately 101 individuals solely employed by the University and another group of approximately 22 individuals who are jointly employed by HILIA and the University?

STATEMENT OF JURISDICTION

This Court has jurisdiction to hear the instant matter pursuant to Illinois Supreme Court Rule 335 and Section 7(d) of the IELRA. 115 ILCS 5/7(d); Ill. S. Ct. R. 335. Section 7(d) provides that an order “certifying that a labor organization has been fairly and freely chosen by a majority of employees in an appropriate bargaining unit” is an appealable order. *See* 115 ILCS 5/7(d). Section 7(d) further states that “[a]ny person aggrieved by any such order . . . may apply for and obtain judicial review in accordance with the provisions of the Administration Review Law . . . except that such review shall be afforded directly in the Appellate Court of a judicial district in which the Board maintains an office.” *Id.* Both Section 7(d) of the IELRA and Illinois Supreme Court Rule 335 require that a party must file an appeal, or petition for review, within 35 days from the date the final order was served upon the party. *Id.*; Ill. S. Ct. R. 335.

In the instant case, the Executive Director issued an Order of Certification (which is a “final order”), on May 30, 2025. On July 3, 2025, the University filed a Petition for Review challenging the Executive Director’s Order of Certification (and by extension the Board’s underlying May 21, 2025, Opinion and Order), within 35 days of

the Board's final order. Additionally, this Court is the proper venue for the above-captioned appeal, because the IELRB maintains an office in Springfield, Illinois, which is within the geographic boundaries of the Fourth District.

STATEMENT OF FACTS

A. General Facts About the University's Laboratory Schools

The University's College of Education ("COE") operates two Laboratory Schools ("Lab Schools") in Normal, Illinois (R030). The Lab Schools' mission is to provide a "living laboratory" for COE students who are studying to become teachers (R030). The University has operated Lab Schools since the University's founding in 1857 (R030-R031).

The Lab Schools include an elementary school and a high school (R035). The schools are separated by approximately a half-mile to a mile (R067-R068). The elementary school (Thomas Metcalf School) teaches children in kindergarten through eighth grade (R035). At the time of hearing, Metcalf's student enrollment was in the low 400's (R040).

The high school (University High School) teaches children in grades nine through twelve (R035). At the time of hearing, the University High School's student enrollment was approximately 624 (R040).

Lab School students are required to submit applications for attendance (R040). A selection committee then decides which students will be allowed to attend the Lab Schools (R040). Lab School students are not required to pay tuition, although they are required to pay a \$300 student fee (R040-041).

Each of these two schools is assigned a Principal, Assistant Principal, and an

Athletic Director (R035). Those positions oversee Teaching Associates and other employees who are subject to the civil service classification system administered by the State Universities Civil Service System (R036). Approximately 101 employees who are exclusively employed by the University work at the Lab Schools (E146 – E148).

B. General Facts About HILIA

HILIA (“Heart of Illinois Low Incidence Association”) is a public entity that was formed in 1996 by six government agencies, which included the University, Bloomington School District No. 87, Livingston County Special Education Cooperative, Mackinaw Valley Special Education Cooperative,² Tri-County Special Education Cooperative, and the McLean-DeWitt-Livingston County Regional Office of Education (R075–R076; E150). HILIA was formed pursuant to Section 10-22.31a of the Illinois School Code. *See* 105 ILCS 5/10-22.31a (C022). By extension, the Illinois State Board of Education recognizes HILIA as a legally distinct “joint agreement” entity with its own unique identification number (R324-R325; E233).

HILIA’s purpose is to provide special services to students with low incidence³ hearing and vision disabilities (R075). These special need students reside in one of 30 school districts located in Livingston, McLean, DeWitt or Logan counties (R075, R078).

At the time of hearing, HILIA provided special educational services to approximately 217 students (R078). None of these students are regularly enrolled at the

² Mackinaw Valley no longer exists as a HILIA member (R077). McLean County Unit 5 has replaced Mackinaw Valley as the sixth HILIA member (R077; E004).

³ “Low incidence” refers to the fact that a relatively small number of students suffer from these disabilities (R075-R076).

University Lab Schools (R079). However, approximately 17 HILIA students receive HILIA services while onsite at the Lab Schools (R041, R087-R088). These students learn braille, sign language, or other listening, speech and language skills (E040). HILIA (or its member school districts) are responsible for transporting these 17 students to the Lab Schools from local area school districts (R088).

HILIA is governed by a five-member Board of Directors (E153), which meets on a monthly basis (R080 - R081). One member of the Board is assigned from each of HILIA's government agency-members (E153; R080). The HILIA Board is responsible for approving annual operating budgets, determining scope of services, hiring employees, and approving the payment of bills and expenses (R080). HILIA member school districts each contribute annual fees to fund HILIA operations (R081). Those operations can include (among other things) employee salaries, professional development and instructional materials (R081).

A University employee by the name of Lisa Kendall serves as the HILIA Director (R073-R074, R108-R109). Kendall reports to the HILIA Board of Directors (E153; R096-R097). Kendall supervises approximately 22 employees who provide disability-related services to HILIA students (R060, R103, R110; E154). This supervision involves hiring, work assignments, evaluations and discipline (R103).

The 22 petitioned-for HILIA positions that Director Kendall supervises include the following job titles and numbers:

HILIA Job Title	Number	University Job Categories
Audiologist	1	Administrative Professional
Interpreter	2	Civil Service
Speech Language Pathologist	1	Faculty Associate
Teacher of the Deaf/Hard of Hearing	11	Faculty Associate
Teacher of Students with Visual Impairments	3	Faculty Associate
Learning Behavior Specialist I	1	Faculty Associate
Teacher of Students with Visual Impairments Facilitator	1	Faculty Associate
DHH Paraprofessional	1	Civil Service
Teaching Assistant -- Vision	1	Civil Service
TOTAL	22	

(E154). Approximately seven of these employees work with HILIA students remotely at HILIA member school districts, while approximately 11 HILIA employees physically work inside the Lab Schools (E154). The remaining five HILIA employees spend part of their employment time working physically onsite at the Lab Schools and the other part of their employment time working remotely in HILIA school districts (E154).

All 22 of these HILIA employees are also considered University employees (R113). HILIA staff who hold the University job title of “Faculty Associate” are subject to the University Faculty Associate Handbook, while HILIA staff who remotely work at school districts are subject to a separate guidance document that Kendall has developed (R118-R119).

HILIA is exclusively responsible for where its employees are physically assigned; the University has no ability to reassign HILIA-employees to teach courses at the University High School or Metcalf School (R044-R045, R095). The HILIA-assigned employee would have to formally apply for a job vacancy in order to teach courses for the University (R053, R095, R117-R118).

HILIA and the University are parties to an intergovernmental agreement that

addresses the terms by which the University helps provide special education services to HILIA students (E004-E007). At the time of the hearing, the 2023 agreement was still in effect as the University and HILIA negotiated a new contract (R085).

Pursuant to this agreement, the University agrees to administer an educational program for HILIA students (E004-E007). In exchange for these administrative services, HILIA reimburses the University for “approved expenses in accordance with the “ROE/ISU budget” (E005; R114). The “ROE/ISU budget” refers to a “budget approved annually in support of the” University-HILIA agreement (E004).

The HILIA Board is responsible for approving the aforementioned annual budget (R098; E233). The budget includes, among other things, the costs that HILIA is willing to pay for the education of its HILIA students at the Lab Sc in its member school districts (R098-R099). These costs include the salaries of HILIA faculty and staff (R099). By extension, the University is not free to adjust HILIA staff salaries without securing permission from the HILIA Board of Directors (R115-R116). Other than employee benefits (like health insurance), all HILIA expenditures “are spent from HILIA funds” (R194–R195).

HILIA acts through its designated administrative agent, the McLean-DeWitt-Livingston-County Regional Office of Education (“ROE”) (E004–E005). The ROE is responsible for submitting HILIA’s annual budget to the Illinois State Board of Education (R082, R323–R324; E233). The ROE is also responsible (pursuant to the University-HILIA Agreement) for reimbursing the University for the salaries of HILIA staff (R114–R115; E005).

STANDARD OF REVIEW

Pursuant to the Illinois Administrative Review Law, an administrative agency's findings of fact are deemed *prima facie* true and correct, but may be overturned if those findings are against the manifest weight of the evidence. 735 ILCS 5/3-110. By contrast, courts review questions of law *de novo*. See *Bd. of Educ. of City of Chi. v. Ill. Educ. Labor Relations Bd.*, 2013 IL App (1st) 122447, ¶ 14 (pure question of law was subject to *de novo* review). In cases involving a mixed question of law and fact, or the legal effect of a set of facts, the “clearly erroneous” standard of review applies. See *City of Belvidere v. Ill. State Labor Relations Bd.*, 181 Ill. 2d 191, 205 (1998).

Questions involving an agency's determination of joint employer status are reviewed under a clearly erroneous standard of review. See *Am. Fed'n of State, Cnty. & Mun. Emp. Council 31 v. State Labor Relations Bd.*, 216 Ill. 2d 569, 578 (2005) (applying clearly erroneous standard to joint employer determination under the Illinois Public Labor Relations Act). As a result, when analyzing whether the IELRB erred in concluding that HILIA and the University are not joint employers of the 22 HILIA employees, this Court should apply the “clearly erroneous” standard of review.

ARGUMENT

The IELRB's rejection of the joint employer issue is clearly erroneous. As fully explained below, the IELRB's error is based on a misapplication of the joint employer test. In short, the IELRB applied the joint-employer analysis to the *entire* petitioned-for bargaining unit, which is not the issue. The University never suggested that the entire unit is jointly employed. Rather, the University established that only the HILIA employees are jointly employed, such that it is inappropriate to certify a combined unit

of jointly employed employees with non-jointly employed employees absent the consent of each employer. *See Thompsonville Community High Sch. Dist. No. 112*, 4 PERI ¶ 1029 (IL ELRB 1988) (absent consent of both employers, mixed unit of jointly-employed employees and solely-employed employees was inappropriate); *Sterling Community Unit Dist. No. 5*, 2 PERI ¶ 1051 (IL ELRB 1986) (mixed unit of solely-employed and jointly-employed employees cannot be formed “absent the affirmative consent of all of the parties”). Therefore, the IELRB should not have certified the petitioned-for unit under these circumstances.

I. THE IELRB ERRED IN FINDING THAT HILIA AND THE UNIVERSITY ARE NOT JOINT EMPLOYERS OF THE 22 PETITIONED-FOR HILIA EMPLOYEES

The IELRB clearly erred when it refused to find that HILIA and the University are joint employers of the 22 petitioned-for HILIA positions. “[J]oint-employer relationships are found where, despite an absence of common ownership, one entity effectively and actively participates in the control of labor relations and working conditions of employees of the second entity.” II DEVELOPING LABOR LAW 27-41 (7th ed. 2017). As explained by the Illinois Supreme Court:

[T]he test for existence of joint employers 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. 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.

Vill. of Winfield v. Ill. State Labor Relations Bd., 176 Ill. 2d 54, 60 (1989) (citations and quotation marks omitted).

The joint employer concept is important in the collective bargaining context, because if one of the employers is excluded from a bargaining unit certification, the parties listed the certification cannot adequately bargain over the employees at issue. For example, if a joint employer is excluded from bargaining, which otherwise has control over the “purse strings” for the employees at issue, the remaining parties would find it extremely difficult to effectively bargain over the typical mandatory subjects of bargaining like wages and benefits. The “key consideration in determining employer status is the extent to which an entity is necessary to create an effective bargaining relationship.” *City of Rockford v. Ill. State Labor Relations Bd.*, 158 Ill. App. 3d 166, 173 (2d Dist. 1987).

Contrary to the IELRB’s finding, the record evidence indisputably demonstrates that HILIA has significant control over the wages, hours and terms and conditions of employment for the 22 HILIA positions. As a result, both the University and HILIA are joint employers of those 22 HILIA employees, which means they cannot be combined with other University employees without HILIA and the University’s consent.

A. HILIA Exercises Significant Control Over the 22 HILIA Employees

The record evidence reflects several significant ways that HILIA can affect the terms and conditions of employment for the 22 HILIA employees. First and foremost, the ALJ correctly found that the HILIA Board of Directors approves an annual budget that specifies the amount of money allowed for HILIA positions, salaries, instructional materials, equipment and mileage (C022).

What the ALJ and IELRB failed to acknowledge, however, is that this annual budget *dictates* the number and types of HILIA employees that are hired/retained by the

University. In turn, this budget dictates the salaries that those same employees receive. This is reflected in the intergovernmental agreement between HILIA and the University, wherein the University's reimbursements are totally dependent on the "ROE/ISU budget" as approved by the HILIA Board of Directors (E005).

HILIA Director Lisa Kendall supported this conclusion when she testified that any deviation from the budgeted HILIA salaries must first be approved by the HILIA Board. In other words, the University cannot unilaterally modify HILIA employee salaries; only HILIA can make that change (R115–R116). In turn, Kendall testified that any new positions must be approved by the HILIA Board of Directors, after which she implements that decision by deciding the specific individuals that will be hired (R329).

This authority to dictate the wages and number of HILIA employees is even greater than that found in several prior joint employer decisions involving county boards. For example, in *Cnty. of Will v. Ill. State Labor Relations Bd.*, a joint employer relationship was found between a county board and the county board of health based on nothing more than the fact that 40 percent of the health board's funding came from the county board (which was required to approve the health board's budget). There was absolutely zero evidence that the county board dictated to the board of health which employees it could hire, discipline or assign. *See* 219 Ill. App. 3d 183, 186 (3d Dist. 1991). In another case involving Will County, the court found joint employer status based on nothing more than the county board's exclusive authority for approving the executive board's annual budget. *See Cnty. of Will v. State Labor Relations Bd.*, 220 Ill. App. 3d 62, 66 (3d Dist. 1991).

Here, HILIA is analogous to the county boards seen in the aforementioned *Will County* decisions. Specifically, HILIA is exclusively responsible for approving the money that is budgeted for the payment of HILIA salaries. However, HILIA exerts even greater control over HILIA employees than seen in the *Will County* decisions due to HILIA's authority for approving the number and types of employee positions that can be filled. Whereas county boards typically approve only a gross annual budgeted amount (which departments can then utilize as they deem appropriate), the HILIA Board goes one step further by dictating the specific amount of salaries and positions that can be filled via its annual budget. As Lisa Kendall testified, any changes to these salaries or positions must be approved by the HILIA Board and the HILIA Board only (R115-R116, R329).

For example, if next year the HILIA Board of Directors decides to approve a budget that reduces HILIA staffing levels, the University will have no control over that decision by, for example, unilaterally transferring HILIA employees to teach regular Lab School students (R044-R045). Similarly, if next year the HILIA Board of Directors decides to pass a budget that necessitates a reduction in HILIA employee salaries, the University similarly will have no control over that decision by unilaterally increasing wages (R116).

In short, the HILIA Board of Directors controls the number and types of HILIA employees, along with their salaries. As a result, the University would be placed in a precarious bargaining position if forced to negotiate reductions-in-force and salary decisions that it did not make. In turn, the University likely would draw the Union's ire (and perhaps bad faith bargaining accusations) when forced to plead an inability to

address any adverse decisions made by HILIA, which the IELRB has ruled is not a joint employer of the 22 petitioned-for HILIA employees.

Despite this undisputed record evidence, the IELRB erroneously relied on the Illinois Supreme Court's *Orenic* decision as support for the proposition that funding by itself is insufficient to establish joint employer status. *See Orenic v. Ill. State Labor Relations Bd.*, 127 Ill. 2d 453 (1989). However, *Orenic* entirely turned on constitutional separation of powers principles, where the Supreme Court concluded that it was improper to compel a judicial branch employer (*e.g.*, a chief judge) to bargain in a joint employer relationship with an executive branch employer (*e.g.*, a county board). *See id.* at 485 ("Any conflict between traditional labor law principles and constitutional principles must be resolved in favor of the latter; and treating county boards as joint employers with chief judges in respect of the courts' nonjudicial employees would unduly trench on the judicial branch's separate and equal status"). Indeed, the Supreme Court conceded that "[t]raditional principles of labor law . . . might arguably suggest that, upon viewing the totality of their economic relationships, the counties and the State are to be considered joint employers of court employees whose salaries the counties pay." *Id.* at 476. As a result, *Orenic* actually *supports* a joint employer finding in this matter, because there is no similar constitutional infirmity in allowing HILIA and the University to jointly bargain for the 22 petitioned-for HILIA employees.

Based on these facts and authority, the IELRB and its ALJ erred when they concluded that the University is the sole employer of HILIA's 22 employees. The record evidence is clear that the HILIA Board of Directors has an immediate and significant impact on the wages and job security of HILIA employees. By extension, excluding

HILIA from the bargaining process risks significant disruptions during upcoming contract negotiations, because the University will be incapable of addressing significant wage and staffing issues over which the Union will likely want to bargain.

**B. HILIA Affects the Terms and Conditions of
HILIA Employees Via Its Agent, Lisa Kendall**

Although the above-described authority should be enough to justify a finding of joint employer status between the University and HILIA for the 22 HILIA employees, additional record evidence supports the conclusion that HILIA significantly impacts their terms and conditions of employment. Specifically, it is undisputed that HILIA's Director is exclusively responsible for making hiring, discipline, evaluation and work assignment decisions pertaining to the 22 HILIA employees (R103). Moreover, the HILIA Director is responsible for modifying HILIA job descriptions when she deems it appropriate (R133).

The ALJ and the IELRB discounted the significance of these facts, because HILIA Director Lisa Kendall is employed by the University and reports to a University official (C085). However, the mere fact that Kendall is a University employee does not detract from her status as an *agent* of HILIA, such that her actions are also attributable to the HILIA Board of Directors. Put differently, the Board failed to acknowledge that Kendall wears multiple "hats," both a University "hat" and a HILIA "hat," which is critical when determining joint employer status.

In that respect, the IELRB has long recognized the concept that parties act through their agents (whose actions in turn can bind their principals). As explained by the IELRB:

An individual is an agent of a party when he or she has actual or apparent authority to act on that party's behalf. Apparent authority exists when a

party has created a reasonable impression that an individual is acting as an agent.

Bd. of Trustees of the Univ. of Ill., 33 PERI ¶ 93 (IL ELRB 2017) (finding a steward was a union agent based on the “apparent authority” with which she was cloaked).

In turn, there is no legal prohibition against a single individual serving as an “agent” of two principals. The Illinois Supreme Court has long recognized such “dual agency” arrangements. *See Adam v. Larson*, 279 Ill. 268, 277-78 (1917) (“The law is well settled that, where the dual agency is disclosed to the principal, the agent may act for both and the agency cannot be questioned”); *accord Mohnk v. Seyfarth*, 339 Ill. 371, 380 (1930) (same).

Based on these legal principles, the IELRB should have found that HILIA Director Lisa Kendall is an agent of HILIA, notwithstanding her dual status as a University employee. By extension, when Kendall hires, assigns, disciplines and evaluates HILIA employees, she is doing so on HILIA’s behalf. The following facts support this conclusion:

- HILIA itself approved Kendall’s job title of “Director” (having been changed from “Program Coordinator”) (R073–R074);
- HILIA advertises Kendall as its Director in promotional materials without any mention that Kendall is also affiliated with the University (E156);
- HILIA’s organizational chart reflects that Kendall reports directly to the HILIA Board of Directors (E153); Kendall herself developed the chart to “demonstrate the way HILIA is organized as a regional program with the Board overseeing the entire program” (R096);

- As the ALJ found, Kendall produces an annual budget for the HILIA Board of Directors' review and approval (C080; R098);
- As the ALJ found, the HILIA Board of Directors expressly authorizes Kendall to create positions and hire staff when deemed appropriate (C080–C081); and
- The ILIA Board of Directors approves the number of positions that will be assigned “in-house” at the Lab Schools or in the field at member school districts (R329-R330); in turn, Kendall is authorized to select individual teachers for those “in-house” or “itinerary” positions (R055, R090-R091, R103).

As these facts demonstrate, Kendall is HILIA's agent pursuant to the actual authority that HILIA has delegated to her. Indeed, the ALJ's own factual findings support the conclusion that Kendall has been delegated the actual authority to make hiring and job assignment decisions on behalf of HILIA.

Besides Kendall's actual authority is the apparent authority with which HILIA has cloaked her. Apparent authority involves actions taken by a principal that “has created a reasonable impression” in the minds of third parties that “an individual is acting as its agent.” *See Bd. of Trustees of the Univ. of Ill.*, 33 PERI ¶ 93. Indeed, the IELRB has found that being designated as a union steward and a member of a union's executive board was enough to create a “reasonable impression” that an individual possesses the apparent authority to act as an agent on behalf of a union. *See id.*

Here, Kendall possesses similar trappings of apparent authority, including the fact that the HILIA Board of Directors consciously changed her job title to that of HILIA

“Director” (R073-R074), and that it publicizes that fact in its employee listings (E156). Moreover, the fact that HILIA has allowed Kendall to craft organizational charts that reflect her direct reporting obligations to the Board of Directors (E153) tells the world that Kendall acts on behalf of HILIA.

Granted, Kendall also internally reports to University COE Associate Dean Anthony Jones (who also serves as the Lab Schools Director) (C079). That is besides the point, however. As explained above, an agent can have more than one “principal,” which is the case here. When that occurs, the individual’s “dual agency” status “cannot be questioned.” *Adam*, 279 Ill. at 277-78.

In light of these undisputed facts and legal principles, the IELRB erroneously discounted HILIA’s ability to impact its employees’ terms and conditions of employment via Kendall’s hiring, discipline evaluation and assignment authority. By extension, the IELRB erroneously concluded that HILIA is not a joint employer of its 22 staff members.

II. BECAUSE THE UNIVERSITY AND HILIA HAVE NOT CONSENTED TO A MIXED UNIT OF JOINTLY AND SOLELY-EMPLOYED EMPLOYEES, THE PETITIONED-FOR UNIT IS INAPPROPRIATE

Having established that the 22-petitioned for HILIA employees are jointly employed by the University and HILIA, the Board should have concluded based on its case law that the University and HILIA’s consent are required before combining the 101 solely-employed University employees (on the one hand) and the 22 jointly-employed HILIA employees (on the other hand).

An ancillary issue that sometimes arises in the joint employer context involves a scenario where part of a petitioned-for unit is jointly employed by two or more employers while the remainder of the unit is solely employed by a single employer.

Groups of jointly-employed and solely-employed individuals cannot be combined in the same unit unless each employer expressly consents to their joinder. *See Thompsonville Community High Sch. Dist. No. 112*, 4 PERI ¶ 1029; *Sterling Community Unit Dist. No. 5*, 2 PERI ¶ 1051. Without such express consent, a petition seeking a mixed unit of solely and jointly-employed employees must be dismissed. *See id.* In fact, the IELRB has long subscribed to this principle:

the duty to bargain exists between an educational employer and the exclusive representative of its employees. Because of the Act's emphasis on the relationship between *the* educational employer and *its* employees, the inclusion of other educational employers and their employees in joint or combined bargaining is appropriate only when all parties agree.

Sterling Community Unit Dist. No. 5, 2 PERI ¶ 1051 (emphasis in original); *accord Thompsonville Community High Sch. Dist. No. 112*, 4 PERI ¶ 1029.

Important policy considerations support the need for employer consent in the multi-employer context. Without it, one employer may be saddled with bargaining for a large group of employees (*e.g.*, the University's 101 solely-employed staff) over which it has absolutely zero authority. In turn, compelling multiple employers to bargain against their will for a mixed unit will soon lead to complexities and confusion as each employer is left to guess which management party is responsible for bargaining a particular set of issues.

In light of these important policy considerations, the IELRB has correctly held that the consent of *all* employers is necessary before approving a mixed unit of solely-employed and jointly-employed individuals. Needless to say, consent is sorely lacking in this case. It is undisputed that the University does *not* consent to combining its 101 solely-employed employees with the 22 jointly-employed HILIA employees. Moreover,

there is no record evidence indicating that HILIA has consented to the Union's proposed unit configuration.

The IELRB totally ignored the above-described case law. Instead, the IELRB confusingly claimed that the HILIA's budget authority for only 18 percent of the entire 123-person unit "does not give HILIA the kind of control over the entire University budget" that would warrant a finding of joint employer status (C074). However, this statement demonstrates an inherent misunderstanding about the University's position. Again, the issue is *not* whether HILIA should be considered a joint employer of the entire 123-person bargaining unit. Nor is the issue whether HILIA is necessary for an effective bargaining relationship for the entire 123-person bargaining issue. Those questions come into play *only* for units which are *totally* employed by joint employers.

The petitioned-for unit, by contrast, consists of 101 solely employed employees (on the one hand) and 22 jointly employed employees (on the other hand). As such, HILIA's impact on the 101-University employed employees is irrelevant. As long as HILIA is a joint employer of the 22-person HILIA group, IELRB case law *demand*s HILIA and the University's consent before those 22 individuals can be combined with the larger 101-employee group.

In light of this lack of consent, the Court should reverse the IELRB's certification of the combined unit of solely-employed and jointly-employed employees, and remand the matter so that the Board can explore whether two separate bargaining units are appropriate.

CONCLUSION

In light of the foregoing record evidence and argument, the University respectfully requests that this Court reverse the decision of the IELRB, order that the Board revoke the certification in Case No. 2024-RC-0013-C, and explore the possibility of creating two separate bargaining units (*i.e.*, one unit consisting of the 101 solely-employed University employees and a second unit comprised of the 22 jointly-employed HILIA employees), assuming there is a proper “showing of interest” for each such unit.

Respectfully submitted,

**BOARD OF TRUSTEES OF
ILLINOIS STATE UNIVERSITY**

By: /s/ James J. Powers
One Of Its Attorneys

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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**

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

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

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601 Tel. 312.793.3170
One Natural Resources Way, Springfield, Illinois 62702 Tel. 217.782.9068
elrb.mail@illinois.gov

STATE OF ILLINOIS
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

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

ORDER OF CERTIFICATION

I. Majority Interest Petition

On June 25, 2024, pursuant to Section 7 of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.*, and Section 1110.105 of the Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135, Petitioner, Lab School Education Association, IEA-NEA (Union), filed a petition with the Illinois Educational Labor Relations Board (IELRB or Board), supported by evidence a majority of those employees of Illinois State University (University), in the petitioned-for unit, desired the petitioning labor organization to be their representative for purposes of collective bargaining. By its petition, the Union seeks certification as the exclusive collective bargaining representative for the following unit of persons employed by the University:

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.*

II. Processing of the Majority Interest Petition

The instant majority interest petition is supported by eighty-five (85) properly signed and dated authorization cards. On July 27, 2024, the University posted a notice from the Board, notifying the petitioned-for employees both of the petition and their rights under the Act in regard thereto, in accordance with Section 1110.90 of the Rules. The University opposed the petition, asserting as configured, the petitioned-for unit lacked a sufficient community of interest, contained a number of persons employed both by the University and another

employer, and included five positions which should be excluded, and therefore, contended the unit sought was inappropriate under Section 7(a) of the Act.

On September 11 and 12, 2024, an agency administrative law judge conducted a hearing on the University's objections and issued a decision on March 12, 2025, finding without merit, the University's argument the petitioned-for unit was inappropriate under Section 7(a) of the Act. The University subsequently appealed the administrative law judge's decision to the IELRB. On May 21, 2025, upholding the administrative law judge, the IELRB issued a decision in which it found the bargaining unit as petitioned for by the Union appropriate for purposes of collective bargaining within the meaning of Section 7(a) of the Act, and directed the undersigned to process the petition in accordance therewith.

III. Jurisdictional Facts

Illinois State University is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. Lab School Education Association, IEA-NEA, is a labor organization within the meaning of Section 2(c) of the Act and likewise, subject to the jurisdiction of the Board.

IV. Discussion and Analysis

Under the Act and Section 1110.105(e) of the Rules, the Board is required to certify the petitioning labor organization as the exclusive bargaining representative, upon the filing of a petition supported by evidence a majority of employees in the petitioned-for unit desire the petitioning labor organization to be their representative for purposes of collective bargaining, provided as follows:

1. the Board concludes the employee organization represents a majority of the employees in the petitioned-for unit;
2. there are no issues of fraud or coercion in obtaining the showing of interest;
3. the petition is otherwise consistent with the Act; and
4. there are no unit appropriateness or exclusion issues, or the number of contested positions or employees is not sufficient to affect the determination of majority status.

In the instant matter, the Union accompanied its petition with authorization cards from what it purported was a majority of the employees in the petitioned-for unit. The University submitted evidence there were one hundred fourteen (114) employees in the petitioned-for titles, and exemplars of each such employee's signature. A Board agent compared the signatures on the authorization cards with the exemplars, and determined a majority of the employees in the petitioned-for unit (74.56%) signed cards authorizing the Union to be their exclusive representative for purposes of collective bargaining. The University does not dispute or challenge the Union's majority. There is no evidence the Union engaged in fraud or coercion to obtain the showing of interest, and the petition is otherwise consistent with the Act.

V. Certification of Representative

Consequently, in accordance with the Act and Rules, Lab School Education Association, IEA-NEA, is hereby certified as the exclusive representative for purposes of collective bargaining for the following bargaining unit:

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.*

VI. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this order in accordance with the provisions of the Illinois Administrative Review Law, 735 ILCS 5/3-101, *et seq.*, except, however, pursuant to Section 16(a) of the Act, any such review must be taken directly to the Appellate Court of the judicial district in which the Board maintains an office (Chicago or Springfield). Petitions for review of this order must be filed within 35 days from the date the order issued, which is set forth below. 115 ILCS 5/16(a). The Illinois Educational Labor Relations Board does not have a rule first requiring a motion or request for reconsideration.

Issued in Chicago, Illinois, this 30th day of May, 2025.

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**



**Victor E. Blackwell
Executive Director**

Case No. _____

**IN THE APPELLATE COURT OF ILLINOIS
FOR THE FOURTH DISTRICT**

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

PETITION FOR REVIEW

Pursuant to 115 ILCS 5/7(d) and Illinois Supreme Court Rule 335, the BOARD OF TRUSTEES OF ILLINOIS STATE UNIVERSITY (“Petitioner”) hereby petitions the Court for review of the “Order of Certification” issued by the ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD (“Board”) on May 30, 2025, in Case No. 2024-RC-0013-C, and by extension, the “Opinion and Order” issued by the Board on May 21, 2025.

Specifically, the Petitioner appeals from the Board’s conclusion that the petitioned-for unit is appropriate under Section 7 of the Illinois Educational Labor Relations Act, and all other issues that the Petitioner raised during Case No. 2024-RC-0013-C, which were rejected either explicitly or implicitly by the Board through the issuance of its “Opinion and Order” and the

Executive Director's "Order of Certification."

Respectfully submitted,

**BOARD OF TRUSTEES OF ILLINOIS
STATE UNIVERSITY**

By: /s/ James J. Powers
One Of Its Attorneys

James J. Powers
ARDC 6256540
Clark Baird Smith LLP
6133 North River Road
Suite 1120
Rosemont, Illinois 60018
(847) 378-7700
jpowers@cbslawyers.com
July 3, 2025

Case No. _____

**IN THE APPELLATE COURT OF ILLINOIS
FOR THE FOURTH DISTRICT**

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

NOTICE OF FILING

TO:

Sam Hensel
Allison, Slutsky and Kennedy, P.C.
230 West Monroe Street
Suite 2000
Chicago, Illinois 60606-4969
hensel@ask-attorneys.com
Attorney for Respondent Union

Ellen Strizak
Illinois Educational Labor Relations Board
160 North LaSalle Street
Suite N-400
Chicago, Illinois 60601-3103
Ellen.Strizak@Illinois.gov
Attorney for Respondent Agency

PLEASE TAKE NOTICE that on July 3, 2025, Petitioner, BOARD OF TRUSTEES OF ILLINOIS STATE UNIVERSITY, caused to be served and filed by electronic means using Odyssey eFileIL on the Clerk of the Fourth District Appellate Court, 201 West Monroe Street, Springfield IL 62704, the enclosed **PETITION FOR REVIEW**, a true and correct copy of which is herewith served upon you.

Respectfully submitted,

James J. Powers
ARDC No. 6256540
Clark Baird Smith LLP
6133 North River Road
Suite 1120
Rosemont, Illinois 60018
(847) 378-7700
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Date: July 3, 2025

**BOARD OF TRUSTEES OF ILLINOIS STATE
UNIVERSITY**

By: /s/ James J. Powers
One of Its Attorneys

CERTIFICATE OF SERVICE

The undersigned attorney certifies that he caused a true and correct copy of the foregoing Petition for Review and Notice of Filing to be served upon:

Sam Hensel
Allison, Slutsky and Kennedy, P.C.
230 West Monroe Street
Suite 2000
Chicago, Illinois 60606-4969
hensel@ask-attorneys.com
Attorney for Respondent Union

Ellen Strizak
General Counsel
Illinois Educational Labor Relations Board
160 North LaSalle Street
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Chicago, Illinois 60601-3103
Ellen.Strizak@Illinois.gov
Attorney for Respondent Agency

by electronic mail and having same placed in a properly addressed, postage prepaid envelope and deposited in the U.S. Mail at 6133 N. River Road, Rosemont, Illinois before 5:00 p.m. on this 3rd day of July, 2025.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ James J. Powers
James J. Powers

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FOR CASE NO. 04-25-0692**

Common Law Record:

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C5 – C13	IELRB Correspondence transmitting the Representation Petition to the employer
C14 – C17	Petitioner’s Motion to Correct Stenographic Record
C18 – C19	Email Requesting an extension of time for filing post-hearing briefs and transmitting Petitioner’s Motion to Correct Stenographic Record
C20 – C32	Administrative Law Judge’s Recommended Decision and Order
C33 – C51	University’s Exception to the ALJ’s Recommended Decision and Order and Brief in Support of its Exceptions
C52 – C71	Lab School Education Association’s Response to the Respondent’s Exceptions to the Administrative Law Judge’s Recommended Decision and Order
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SUPC002	Table of Contents of Common Law Record Supplement
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SUP067 – SUP094	ISU’s Post-Hearing Brief
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Report of Proceedings (Hearing Transcript):

Andrea Market:	direct examination (R028 – R053) cross examination (R053 – R068) redirect examination (R069) recross examination (R070 – R071)
Lisa Kendall:	direct examination (R073 – R108) cross examination (R108 – R133) redirect examination (R133 – R136) recross examination (R136)
Michael Kruger	direct examination (R140 – R148) cross examination (R148 – R150)
Janice Bonerville	direct examination (R151 – R190) cross examination (R190 – R192)
Andrea Market	direct examination (R193 – R195) cross examination (R195)
Ben Matthews	direct examination (R196 – R198) cross examination (R198 – R199)
Sarah Hlade:	direct examination (R201 – R218) cross examination (R218 – R229) redirect examination (R230 – R232) recross examination (R233)
Corey Culbertson	direct examination (R269 – R288) cross examination (R288 – R296)
Andrew Goveia	direct examination (R297 – R307) cross examination (R307 – R314) redirect examination (R314 – R316)
Lisa Kendall	direct examination (R318 – R325) cross examination (R326 – R330) redirect examination (R330 -R333)
Andrea Market	direct examination (R335 – R338)

Hearing Exhibits:

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E17 – E19	Petitioner Exhibit 4 – Julie Strunk Interpreter for the Deaf & Hard of Hearing Position Description
E20 – E23	Petitioner Exhibit 5 – Shannon Morrow Senior Interpreter for the Deaf & Hard of Hearing Position Description
E24 – E27	Petitioner Exhibit 6 – Nicholas Lisowski Program Coordinator Position Description
E28 – E30	Petitioner Exhibit 7 – Alison Sherren Specialist Ed Audiologist Position Description
E31 – E33	Petitioner Exhibit 8 – Sarah Lin Brailist for Children with Visual Impairments Position Description
E34 – E36	Petitioner Exhibit 9 – Jill Runyon Teacher Aide Position Description
E37 – E86	Petitioner Exhibit 10 – Faculty Associate Handbook
E87 – E138	Petitioner Exhibit 11 – Lab School Personnel in Response to FOIA Request
E139 – E140	Petitioner Exhibit 12 – Mary Houghton work history from Oct. 2022 – May 2024
E141 – E145	Petitioner Exhibit 13 – Shemika Perkins Program Assistant Position Description
E146 – E148	Respondent Exhibit 1 – List of ISU Lab School Employees
E149	Respondent Exhibit 2 – ISU College of Education Organization Chart

E150 – E152	Respondent Exhibit 3 – 1996 Educational Services Agreement Between ISU and Several Educational Entities
E153	Respondent 4 – HILIA Organizational Chart
E154 – E155	Respondent Exhibit 5 – HILIA Faculty/Staff List and Work Locations for 2024-25 Academic Year
E156 – E157	Respondent Exhibit 6 – 2024-25 List of HILIA District Staff
E158 – E161	Respondent Exhibit 7 – Summary of ISU Union Contracts
E162 – E165	Respondent Exhibit 8 – Email and Draft Position Description for Teaching Consultant Vacancy
E166 – E169	Respondent Exhibit 9 –Hiring Request for Library Teaching Assistant
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E177 – E182	Respondent Exhibit 11 – Email and Hiring Request for Library Teaching Assistant
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E189 – E232	Respondent Exhibit 13 – ISU Employee Policies and Procedures
E233	Respondent Exhibit 14 -- HILIA 2023-24 Annual Budget Submission Form

* * *

CERTIFICATE OF SERVICE

The undersigned certifies that he caused a true and correct copy of the foregoing PETITIONER ILLINOIS STATE UNIVERSITY'S BRIEF to be served upon the following individuals (at the listed email addresses):

Sam Hensel
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Attorney for Respondent Agency

by electronic mail as well as the court's approved electronic filing service provider (Odyssey eFileIL) on this December 18, 2025.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ James J. Powers
James J. Powers