

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
: :  
: Case No. PERA-R-17-355-W  
: :  
THE UNIVERSITY OF PITTSBURGH :

**ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST**

On December 15, 2017, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (Steelworkers or Union) filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board) alleging a thirty percent showing of interest and seeking to represent a unit of all full-time and regular part-time workers of the University of Pittsburgh (University, Pitt or Employer), including but not limited all salaried and hourly graduate employe Teaching Assistants, Teaching Fellows, Graduate Student Assistants, and Graduate Student Researchers employed by the University at its Pittsburgh campus; and excluding all other employes, including trainees, unpaid graduate assistants, faculty, staff, office clerical employes, non-professional employes, guards and supervisors as defined in the Public Employe Relations Act (PERA or Act).

On January 8, 2018, the Union amended its petition seeking to represent all salaried and hourly graduate employe Teaching Assistants, Teaching Fellows, Graduate Student Assistants, and Graduate Student Researchers employed by the University at all campuses and excluding all other employes including trainees, unpaid graduate students, faculty, staff, office clerical employes, non-professional employees, guards, and supervisors as defined in PERA.

On January 25, 2018, the Secretary of the Board issued an Order and Notice of Hearing, in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating June 4 through June 8, 2018, in Pittsburgh, as the time and place of hearing, if necessary.

The Hearing Examiner continued the hearing over the objection of the Union and a hearing was held in Pittsburgh on October 1, 2, 3, 4, 5, 30, 31 and November 1, 2018, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union filed its post-hearing brief on December 24, 2018. The University filed its post-hearing brief on January 25, 2019. The Union filed a reply brief on February 9, 2019.

The Hearing Examiner, on the basis of the evidence presented at the hearing, and from all other matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. The University is a public employer within the meaning of Section 301(1) of PERA. (N.T. 18).

2. The Union is an employe organization within the meaning of Section 301(1) of PERA. (N.T. 18-19).

3. The petitioner Union has an adequate showing of interest as defined by the Act.

4. In the fall term of 2017, the University had 7,143 graduate students seeking a research degree (Ph.D. or research Master's). All of these graduate students were located at the University's main Oakland campus. This number does not include an additional approximate 2,200 graduate students seeking professional degrees. The University has approximately 90 programs across fourteen schools which award a Ph.D., and the University awards approximately 450 Ph.D.'s per year. (N.T. 578, 586, 610; University Exhibit 18, 20).

5. In general, for a graduate student to earn a Ph.D. at the University, he or she must complete 72 hours of proscribed coursework, a primary examination, complete a Master's thesis, a comprehensive exam, a thesis proposal, and a dissertation defense. These requirements are sometimes referred to as milestones. Each program may have somewhat different additional requirements in addition to these general requirements. (N.T. 198, 273-276, 478-479, 588-589, 633-635, 1049-1054, 1135, 1272-1273, 1659-1660; Union Exhibit 173, 180, 181, 193, 194, 207, 235; University Exhibit 21, 95).

6. In general, a graduate student seeking a research degree is required to have an undergraduate degree or master's degree from a recognized college or university, demonstrate English proficiency, and sufficient GRE scores. (N.T. 1212, 1710; Union Exhibit 165, 173, 199; University Exhibit 82).

7. In the context of graduate students pursuing research degrees, the University appoints graduate students to be Teaching Assistants (TAs), Teaching Fellows (TFs), Graduate Student Assistants (GSAs), and Graduate Student Researchers (GSRs). These are referred to as academic appointments. In addition to academic appointments, graduate students seeking research degrees may also be fellows or trainees. Fellows are recipients of a fellowship and trainees are participants in a trainee grant. Some graduate students seeking research degree do not have an academic appointment and are not a fellow or trainee. In the spring term of 2018, the University had approximately 370 TAs, 367 TFs, 245 GSAs, 828 GSRs, 544 fellows, and up to 304 trainees. In general, the University has between 1,800 to 1,900 graduate students on TA, TF, GSA and GSR academic appointments per year. (N.T. 644-646, 809-810; University Exhibit 24).

8. Graduate students seeking a research degree who do not receive an academic appointment as a TA, TF, GSA or GSR, and are also not a trainee or fellow, must pay for their tuition. Admission to a graduate program does not imply the granting of financial assistance. It is possible to be a self-funded graduate student seeking a research degree and some graduate students at the University earn their Ph.D. without ever being a TA, TF, GSA or GSR. (N.T. 813, 959, 1256, 1301-1302, 1581-1582, 1608; University Exhibit 82).

9. Full-time TAs, TFs, GSAs, and GSAs are required to be full-time graduate students during their appointment and be making adequate academic progress. Full-time graduate students must register for nine or more credits

in any given term. Regardless of what academic support a graduate student receives, the expectations for course load, milestones, and time to graduate remain the same. (N.T. 655, 1264; Union Exhibit 181, 193, 194).

10. A Teaching Assistant (TA) is a University position held by a graduate student. A Teaching Fellow (TF) is a University position held by a graduate student. A TF position is similar to a TA position except that the TF is more advanced, experienced or has passed some milestone. Sometimes the terms are used interchangeably at the University and the duties are the same. TAs and TFs are appointed to teaching or teaching-related positions. TAs and TFs lead recitation and laboratory sections and also teach classes independently where they are the teachers of record for a course. TAs and TFs assist faculty, present lectures, answer student questions, create syllabuses and lesson plans, and assign and grade assignments, papers and exams. TAs and TFs are required to have regular office hours. TAs and TFs are appointed for terms in the fall, spring and summer academic terms. Courses taught by TAs and TFs are also taught by other faculty including adjuncts, tenure-track professors and tenured professors. TAs and TFs must be fluent in English and pass an English Comprehensibility Test. (N.T. 50-52, 82, 105, 124, 126-135, 168, 181, 193, 205-210, 239-240, 243, 247, 281-297, 312, 329, 331-335, 340, 358, 393, 393-394, 409-411, 457-460, 850-851, 1088-1094, 1247-1248, 1252, 1254, 1260-1261, 1277, 1387, 1418, 1463-1464, 1903; Union Exhibit 2, 35, 165, 181, 193, 194, 228, 236; University Exhibit 90).

11. TAs and TFs are assigned classes to teach by program or department directors. They do not have a choice in what classes they must teach. Teaching assignments are made by program need to make sure enough teachers are available for particular courses and curricular needs. TAs and TFs may also request specific classes to teach and their preferences are sometimes considered when assigning classes to teach. The number of TAs and TF appointments that are awarded may be based on factors including the number of undergraduate courses being offered and projected undergraduate enrollment. The classes assigned to TAs and TFs are not always directly related to their dissertation topics. (N.T. 52-53, 138, 182, 193, 216, 332-335, 372, 409, 457, 1630, 1881; Union Exhibit 151, 173, 203, 204, 228, 246).

12. A Graduate Student Assistant (GSA) is a University position held by a graduate student. GSAs assist in the preparation of grant proposals, carry out research tasks, prepare and conduct literature reviews, assist with data management and analysis, assist in conference preparation, assist in manuscript preparation, and serve as an editor for academic journals. GSAs may serve as lead test engineers and may also perform duties similar to a TA. GSA appointments are made pursuant to faculty staffing requirements, however graduate student interest is also considered when matching faculty staffing needs. GSA appointments are typically made for one year (fall and spring terms) and may also cover the summer term. Graduate students do not receive academic credit for their work as GSAs. The work performed on a GSA appointment may not be related to the graduate student's dissertation. (N.T. 47-48, 357, 361-365; 412, 1252, 1292, 1431, 1865-1876, 1929-1941; Union Exhibit 2, 35, 181, 211).

13. A Graduate Student Researcher (GSR) is a University position held by a graduate student. GSRs perform research duties which include: collecting data (running tests and conducting experiments), analyzing data, summarizing methods in the form of presentations, reporting results, applying

advanced computer skills, participating in seminars and other formal education activities, working with lab equipment and resources, attending meetings with supervisors and collaborators, and engaging in field work. The work a GSR performs is typically tied to a particular faculty member (the principal investigator) and any research grants that faculty member may have. While GSRs may perform work as a GSR that is related to their academic interest, GSRs sometimes perform work that is not related to their academic interests and do not have any input in selecting the research topic they are assigned to. In other words, while the research performed is sometimes an integral part of the student's thesis or dissertation research, there is no requirement that it be so. GSR appointments are typically made for the one year (fall and spring terms) and may also cover the summer term. (N.T. 411-414, 425-427; 445-446; 469; 470, 487, 490-492, 931, 978, 1223-1224, 1252, 1284-1287, 1306, 1378-1379, 1602-1603, 1705, 1732, 1774-1786, 1901-1902; Union Exhibit 3, 33, 211, 212).

14. Graduate students sometimes receive academic credit for their work in the form of research and dissertation credits. These are credits earned by a graduate student to reflect the fact that they are performing research that will lead to a dissertation. These credits do not reflect a completion of a course and are placeholder credits used to signify that they are performing research and helps the graduate student reach the Ph.D. requirement of nine credits a semester to be a full time student and the total credit requirement of 72 credits to earn a Ph.D. (N.T. 719, 1155-1156, 1236, 1496, 1676, 1744, 1958).

15. The University-wide policy is that full-time TAs, TFs, GSAs and GSRs should normally work no more than 20 hours per week on average. These workload expectations do not include the substantial personal effort that students must invest to meet training and degree requirements and to advance their research and publication records. In other words, the work required is in addition to that work required for course work and study. However, they sometimes work more or less than 20 hours per week. GSRs may work more hours when the research they are assigned is integral to their own thesis or dissertation research. (N.T. 55, 168, 284, 333, 397, 469, 652-653, 1290, 1520, 1595-1597, 1776; Union Exhibit 2, 3, 33, 35, 165, 173, 211, 212, 242; University Exhibit 26, 82, 90).

16. TAs and TFs are observed by faculty and are also evaluated by students using the University's OMET system. (N.T. 151, 1279-1280; Union 165, 173, 193, 228; University Exhibit 90).

17. TAs, TFs, GSAs and GSRs are assigned office or work space by the University on campus. They also work in laboratories on campus. They often work in the same room with or near other TAs, TFs, GSAs and GSRs. (N.T. 104, 172-173, 298, 340, 1400-1401, 1407, 1434, 1586, 1706, 1773, 1867, 1874, 1904).

18. TAs, TFs, GSAs and GSRs are directed, supervised and evaluated by faculty. (N.T. 490, 1239, 1288, 1291; Union Exhibit 35, 194, 206, 212, 213, University Exhibit 90).

19. Timothy Barr is a graduate student in the Department of Communication. As a graduate student, he has served as a TA and TF. Prior to the 2018-2019 academic year, Barr received an offer of appointment or contract to be a TF from the University. All graduate students who receive

TA, TF, GSA and GSR appointments receive a similar offer of appointment letter prior to every new appointment. TAs, TFs, GSAs, and GSRs receive substantially similar appointment letters if they are appointed for summer sessions as well. Barr's offer of appointment letter for the 2018-2019 academic years states in relevant part:

Date	May 7, 2018	
Department	Communication	
Academic Year	2018-2019	
Academic Term	Fall	Spring
Appointment Percentage	Full	Full
Hours Per Week	20 hours	20 Hours
Stipend \$19,180.00	\$9,590.00	\$9,590.00
Enrollment Minimum	Credit 9 credits	9 credits
Scholarship Amount	Tuition 9-15 credits	9-15 credits
Wellness Fee	Graduate Student Pays	Graduate Student Pays
Computing/Network Service & Security/Safety/Trans. Fee	Graduate Student Pays	Graduate Student Pays
Graduate Activity Fee	Student Must Pay by Due Date	

Dear Mr. Barr:

I am happy to offer you an appointment as specified above. The stipend will be paid in equal monthly installments for the term(s) of appointment with the first check issued on September 28 for the fall term and/or January 31 for the Spring term. Depending on the outcome of the current budget process, the 2018-2019 stipend is anticipated to be somewhat higher than the amount indicated above. Note that the fall term begins on August 27, 2018 and the spring term ends on April 27, 2019. As specified by the 1986 Immigration Reform and Control Act, you will be required to verify U.S. Citizenship or authorization for this appointment. State and University regulations require that students assigned to classroom or laboratory instruction must be certified through formal University procedures as

speaking comprehensible English; students cannot expect reappointment as a TA or TF without such certification. I am also happy to offer you a tuition scholarship based on academic merit. As a condition of maintaining this appointment and tuition scholarship, you will be asked to assist in activities supportive of University instruction (see hours per week above), and to be enrolled for the minimum credits listed above. You must carry out your teaching and/or related activities effectively, be in good academic standing, and maintain an overall graduate average of 3.00. Your department will provide the assignment of specific duties and an orientation. . . .

Currently the University provides individual health insurance to graduate students with eligible academic appointments. . . . An option to purchase family coverage under this plan is available at a cost, which is the difference between the family coverage and the individual coverage. . . .

Please respond to this combined offer of an appointment and scholarship by checking the appropriate line of this letter, signing it, and returning it. . . . within two weeks from the date of this letter. . . .

The Policy Statement for TA/TF/GSAs, which applies to this appointment and scholarship offered here, is available online . . . . Please note that the Appointment section makes reference to the Policy of the Council of Graduate Schools in the United States regarding the binding nature of accepting this appointment.

Sincerely,  
Tina Meyer  
Assistant Dean

(N.T. 169, 201, 238, 280, 284, 294-295, 331-336, 395, 460, 1102, 1257-1260, 1871, 1897-1903, 1926-1939; Union Exhibits 47, 59, 61, 62, 69, 72, 154-159, 164, 166-169, 175, 177, 183, 184, 187, 189, 190, 191, 196, 205, 232, 244, 260, 261, 262, 263, 264, 265, 266, 268, 269, 271, 272).

20. TAs, TFs, GSAs and GSRs are paid a salary in the form of a stipend by the University. TAs, TFs, GSAs and GSRs are paid through the University's payroll system. The salaries for TAs, TFs and GSAs are standard throughout the University. Each year the level of compensation is considered and adjusted by a high-level University committee including representation from the Office of the Provost. The amount of the stipends is set, in part, to attract the best graduate students. The base salary for GSRs is recommended annually by the Office of the Provost based on the range of compensation for TAs, TFs, and GSAs. The actual salary for GSRs is set by faculty member who administers the research grant or contract. Base salaries below the recommended minimum are not permitted and salaries above the recommended maximum must be approved by University administration. For the 2018-2019 academic year, the stipend rates per term were: GSA \$7,720; TA

\$9,455; TF \$9,830; GSR \$7,720 - \$10,810. TAs, TFs, GSAs and GSRs are taxed on their income and receive a W-2. (N.T. 53, 135, 169-170, 210-211, 241, 333, 337, 415, 460, 649-650, 748-758; 841-842, 889-891, 1258-1259; Union Exhibit 2, 3, 160, 170, 176, 212, 226).

21. TAs, TFs, GSAs and GSRs received subsidized health insurance through the University and may participate in the University's graduate student health plan. TAs, TFs, GSAs and GSRs who receive full-time or fractional appointments are eligible to participate in the graduate student health insurance plan. TAs, TFs, GSAs and GSRs are also eligible to purchase family coverage and dental and vision coverage. (N.T. 56, 139, 169, 211, 333, 460, 649-650, 761-764; Union Exhibit 2, 3, 212; University Exhibit 45).

22. TAs, TFs, GSAs and GSRs receive tuition scholarships. (Union Exhibit 2, 3, 212).

23. TAs, TFs, GSAs and GSRs may also receive scholarships for the Student Health Services fee, the computing and network service fee, and the security, safety and transportation fee. (Union Exhibit 2, 3).

24. TAs, TFs, GSAs and GSRs are required to perform services in exchange for a stipend, full tuition scholarships, and health benefits. (N.T. 362, 1450, 1458; Union Exhibit 35, 151, 193, 206; University Exhibit 82, 110).

25. It takes on average close to six years to earn a Ph.D. TA, TF, GSA and GSR appointments are typically made for one year. Students are typically reappointed and students can typically expect renewals. Graduate students may spend up to five years as a TA or TF. Funding through a TA, TF, GSA or GSR appointment can be expected for up to four to five years. Renewals of TA, TF, GSA and GSR appointments are generally renewed if the graduate student performs well in assistantship duties and makes satisfactory progress towards a graduate degree. (N.T. 47, 488, 639, 825-826; 963-964, 1280, 1418, 1494; Union Exhibit 2, 3, 151, 152, 165, 181, 194, 198, 238; University Exhibit 25, 82).

26. TA, TF, GSA, and GSR appointments may not be renewed due to unsatisfactory professional conduct or performance and the appointment may be terminated. A TA, TF, GSA or GSR may initiate grievance procedures if they are dissatisfied with a termination or work conditions. (Union Exhibit 2, 3, 151, 173, 181, 211).

27. In general, serving on an academic appointment as a TA, TF, GSA or GSR is not required in order to obtain a Ph.D. There are two exceptions. The English department requires all Ph.D. students to teach two terms as part of their academic requirement, which is completed while the student is on an academic appointment as a TA. The English Department requirement is related to the Department's need for teachers for the "Seminar in Composition" course, which all entering first year undergraduate students in arts and sciences and in some other school are required to take. The Biology Department requires students to be a TA for one semester. In the Spring 2018 semester, Biology had four TAs appointed. (N.T. 49-53, 75-76, 235, 342, 362-363, 385, 408, 438-439, 484; Union Exhibit 151; University Exhibit 24).

28. Some graduate students are funded on institutional research training grants. The NIH issues institutional research training grants which

are referred to as T32, TL2, T34 and T35 grants. The NIH also issues individual training grants directly to graduate students which are referred to as F30 or F31 grants. The NSF also issues similar training grants. These grants will, in part, fund pre-doctoral training (training of graduate students) in targeted fields deemed important by federal agencies and train graduate students in a particular skillset. These grants are directed to a faculty member or graduate student and not to the University. The work done by a graduate student on a training grant is similar to the program completed by a graduate student performing the University's graduate program, but tailored specifically to the grant and the student's interests. Graduate students on training grants receive a stipend and tuition waiver but do not receive health insurance benefits from the University. Stipend levels are set by the NIH and not the University. Trainee stipends are supplemented by funds not connected to the grant. The tuition for graduate students on institutional training grants is partially paid for out of the grant and they do not receive a scholarship from the University. These students receive an IRS Form 1099 from the University and the recipient students are obligated to pay income taxes and they are not withheld. None of the work a graduate student does on a trainee grant is done in exchange for salary, tuition, or other benefits from the University. Trainee grants for graduate students typically last a year and they do not spend their entire graduate student career on trainee grants. Grants are reviewed by the grantor every five years and the grantor specifically requests information on the education and career outcome of trainees funded on the trainee grant. The grantor has the ability to terminate grants which would terminate funding from the grantor to the trainees. (N.T. 493-510, 656-658, 664-691, 759, 817, 820-821, 934, 1048, 1095-1096, 1255; Union Exhibit 215, 216, 217, 218, 221, 222; University Exhibit 28, 66).

29. Graduate students on fellowship are not required to perform services such as teaching or research in return for funding. There is no work requirement. Students on fellowship generally receive a stipend and a full tuition scholarship. Students seek fellowships in order to devote more time to their studies as there is no work requirement. Recipients of fellowships are not permitted to hold a teaching or other remunerative position. Fellowships typically last one academic year. (N.T. 47, 93, 138, 164, 174-175, 227, 236-237, 280, 330-336, 392, 434, 1255, 1264-1271, 1288-1289, 1298, 1306, 1449-1454, 1924-1925; Union Exhibit 119, 120, 121, 123, 127, 151, 163, 174, 181, 182, 192, 201, 238, 259).

#### DISCUSSION

The Union seeks to represent graduate student employes of the University. In its Brief, the Union amended the language of the petitioned for bargaining unit to: "All full-time and regular part-time graduate student employee Teaching Assistants, Teaching Fellows, Graduate Student Assistants, and Graduate Student Researchers employed by the University of Pittsburgh at all campuses, but excluding all Trainees, Pre-Doctoral Fellows, Post-Doctoral Fellows, undergraduate assistants, hourly employees, casual appointments, faculty, staff, office clerical employees, non-professional employees, guards, and supervisors." (Union's Brief at 1). The University contests the petition on a variety of grounds. Based on the record, I find that a recognizable unit of public employes consisting of graduate student employes



at the University exists and will order the University to prepare a list of employes eligible for inclusion in the unit described below.<sup>1</sup>

My analysis of the petition first turns to the question of whether these graduate students are employes of the University and public employes under PERA.

The relevant definition in PERA is:

"Public employe" or "employe" means any individual employed by a public employer but shall not include elected officials, appointees of the Governor with the advice and consent of the Senate as required by law, management level employes, confidential employes, clergymen or other persons in a religious profession, employes or personnel at church offices or facilities when utilized primarily for religious purposes and those employes covered under [Act 111].

43 P.S. § 1101.301(2). In the context of public labor law, the relationship of employer to employe exists when a party has the right to select the employe, the power to discharge him, and the right to direct both the work to be done and the manner in which such work shall be done. McCulligan v. Pennsylvania Railroad Co., 214 Pa. 229 (1906). The duty to pay an employe's salary is often coincident with the status of employer, but not solely determinative of that status. Sweet v. Pennsylvania Labor Relations Bd., Washington Cty., 457 Pa. 456, 462, (1974).

The Board has previously held that graduate student assistants (graduate assistants) may be public employes under PERA. In the Matter of the Employes of Temple University, 32 PPER ¶ 32044 (Order Directing Remand to the Hearing Examiner for Further Proceedings, 2000); In the Matter of the Employes of Temple University, 32 PPER ¶ 32164 (Final Order, 2001); Nisi Order of Certification (April 6, 2001, PERA-R-99-58-E). As the details of the previous decisions in this matter are relevant to my ultimate determination and to addressing the arguments of the University, an overview of the previous relevant law is appropriate.

In Philadelphia Association of Interns and Residents v. Albert Einstein Medical Center, Temple University, 470 Pa. 562 (1977) (PAIR), the Pennsylvania Supreme Court held that medical interns, residents and clinical-fellows were not public employes under PERA because those individuals were at Temple

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<sup>1</sup> I address here an evidentiary issue which remains open. On November 1, 2018, at the end of the hearing in this matter, the University moved into evidence university Exhibits 123-182. Of those exhibits, the Union objected to exhibits 131, 132, 157, 158, 166-172, 174-180, and 182. I deferred ruling and requested letter briefs which were submitted by the parties on November 9th and 12th, 2018. With respect to University Exhibits 166-172, 174-180, and 182, which are excerpts from various public employe collective bargaining agreements, the Union objects on the basis that the documents are irrelevant, unauthenticated, and hearsay. I sustain the Union's objections. With respect to University Exhibits 131, 132, 157 and 158, which are academic papers produced by academics affiliated with the University the Union objects on the basis that the documents are irrelevant, unauthenticated, and hearsay. I overrule the Union's objections and these documents are made part of the record.

University for the primary purpose of fulfilling educational requirements and not for the primary purpose of employment. Id., at 569. The Supreme Court opined:

The interns, residents and clinical-fellows at Temple University are at Temple not for the primary purpose of obtaining monetary remuneration, but rather to fulfill educational requirements. The interns are required by state law to serve a year of internship at an approved hospital in order to be admitted to the practice of medicine, which is, in essence, a fifth year of medical school.

The residents who are at hospitals such as Temple are medical doctors admitted to practice, but who wish to specialize in a certain field of medicine and be certified by the medical association as specialists. The residency requirement is an integral step in the obtaining of board certification as a specialist and, again, this training can only be obtained at an approved hospital, such as Temple.

Lastly, the clinical-fellows at Temple are residents who have fulfilled their residency requirements, but stay at hospitals such as Temple in order to obtain more training in their specialty and ultimately go on to teach or do research in the medical field. Again, a portion of their time is spent either receiving instruction, teaching or doing research, all designed to further the educational level of appellants.

In our opinion, while appellants herein are clothed with the indicia of employee status, the true nature of their reason for being at Temple University negates their employee status. Appellants do not go to work at Temple in the true bargained-for exchange normally associated with the employer-employee relationship. Appellants are not primarily seeking monetary gain, but rather are attempting to fulfill educational requirements, either to initially practice medicine, or obtain certain specialties in the medical field. Moreover, appellants herein are not, because of certain medical board requirements, free to obtain this training from any hospital in the Commonwealth; appellants must work at a hospital approved as a teaching hospital, such as Temple. This again evidences that the general bargained-for exchange of the normal marketplace is absent in the instant case.

Id., at 568-69 (internal citations omitted).

In Temple University, 32 PPER ¶ 32044, the Board considered the status of graduate students and opined:

In this case, the Graduate Assistants perform vital teaching and research services for Temple not, as the student-workers at issue in Cedars-Sinai<sup>2</sup> and PAIR, as a required part of their educational curriculum, but by their own choice. There is no requirement that a graduate student perform work for Temple as a Graduate Assistant

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<sup>2</sup> Cedars-Sinai Medical Center, 91 LRRM 1398 (1976) (The National Labor Relations Board (NLRB) concluded that similarly-situated employees were not employees within the meaning of the National Labor Relations Act (NLRA).)

in order to obtain a graduate degree. The Graduate Assistants receive compensation from Temple in the form of stipends and tuition and book allowances and are required to perform services for Temple in exchange for that compensation. While Temple argues that graduate assistantships are tailored to meet the academic and professional needs of the Graduate Assistants, the Graduate Assistants do not receive academic credit for the performance of their duties. The Hearing Examiner, in dismissing the petition, noted the difference between the Graduate Assistants here and the interns, residents and fellows in PAIR, but relied upon the Supreme Court's reasoning in PAIR to conclude that the Graduate Assistants are only engaged in work for Temple because they are in a graduate program and that the "spirit" of PERA would not be served by allowing formation of a bargaining unit of Graduate Assistants because those individuals are not attempting to "establish a continuous relationship with [Temple], but rather after having fulfilled their educational requirement in either one, two or three years, leave the appellee hospital for new areas of endeavor."

We agree with the Association that the Graduate Assistants are factually distinguishable from the residents, interns and clinical fellows at issue in PAIR. As noted above, the Graduate Assistants performed vital teaching and research services for Temple, not, unlike the workers at issue in Cedars-Sinai and PAIR, as a required part of their educational curriculum but by their own choice. There is no requirement that a graduate student perform work for Temple as a Graduate Assistant in order to obtain a graduate degree. The Graduate Assistants receive compensation from Temple in the form of stipends and tuition and book allowances and are required to perform services for Temple in exchange for that compensation. Accordingly, the Supreme Court's decision in PAIR is not dispositive of the status of the Graduate Assistants at Temple and we subscribe to the analysis set forth in the NLRB's decision in Boston Medical Center<sup>3</sup>, which is even more persuasive when applied to the Graduate Assistants here. Further, the Graduate Assistants here have an established relationship with Temple for periods of one to five years. The notion that an individual whose relationship with an employer lasts for a period of more than one year would be denied employe status under PERA is contrary to our case law regarding regular part-time employes. Therefore, the Hearing Examiner's conclusion that the Graduate Assistants, as a general matter, are not "public employes" within the meaning of PERA will be vacated, along with the Hearing Examiner's conclusion that the Association is not an "employe organization" within the meaning of PERA, as that conclusion flows from the Hearing Examiner's conclusion that the Graduate Assistants are not employes.

Id., (internal citations omitted). Thus, the Board, in the context of graduate assistants, distinguished the holding in PAIR and found that graduate assistants may be public employes under PERA. In Temple University, 32 PPER ¶ 32164 (Final Order, 2001), the Board, in its Final Order, upheld

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<sup>3</sup> Boston Medical Center Corporation, 162 LRRM 1329 (1999) (The NLRB reversed its decision in Cedars-Sinai Medical Center and concluded that interns, residents and fellows clearly came within the NLRA's definition of employee.)

its earlier decision that graduate assistants are public employes under PERA. The Board wrote:

In our previous remand order, we noted the NLRB's recent reversal of Cedars-Sinai Medical Center and factually distinguished the graduate assistants in this case from the residents, interns and clinical fellows in PAIR by noting that the graduate assistants perform vital teaching and research services for the Employer not as a required part of their educational curriculum, as was true in PAIR, but by their own choice. There is no requirement that a graduate student perform graduate assistant work in order to obtain a graduate degree. The graduate assistants receive no academic credit for their performance of graduate assistant work. The Board also noted that the graduate assistants receive compensation from the Employer in the form of stipends/pay and tuition and book allowances and are required to perform services for the Employer in exchange for that compensation, evidencing an employer-employee relationship.

. . . .

In sum, the Board reaffirms its decision that graduate assistants are "employes" within the meaning of PERA and may properly exercise collective bargaining rights in relation to wages, hours and working conditions. Accordingly, the exceptions filed by the Employer must be dismissed and the Nisi Order of Certification shall be affirmed.

Id. Thus, the Board considers graduate assistants to be public employes, without any significant restriction on the scope of the unit, with the following parameters:

(1) The graduate assistants receive compensation, which may be in the form of stipends and tuition, and are required to perform services in exchange for that compensation which evidences an employer-employee relationship.

(2) The graduate assistant has or expects an established relationship with the University for a period of at least one to five years or more.

(3) There is no requirement that graduate students perform work as graduate assistants in order to obtain a graduate degree.

In Pennsylvania State University, PERA-R-17-40-E, (Order Directing Submission of Eligibility List, February 6, 2018), I applied the above law to the record in that case and found that graduate students on assistantship and traineeship, including teaching assistants, research assistants, or administrative support assistants, were public employes under PERA.<sup>4</sup> Pursuant to that conclusion, and based on the record in that matter, I concluded that the unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of:

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<sup>4</sup> In Pennsylvania State University, I concluded graduate students on traineeship were public employes. I do not reach that conclusion in this matter as described below.

All full-time and regular part-time professional employes who are graduate students on graduate assistantship or traineeship and who perform services as teaching assistants, research assistants, or administrative support assistants and excluding graduate students on fellowship, management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.

Turning to this matter, dealing with the University of Pittsburgh, the record supports the conclusion that graduate students on an academic appointment who perform work as teaching assistants, teaching fellows, graduate student assistants, and graduate student researchers are public employes. TAs, TFs, GSAs and GSRs receive compensation from the University in the form of a stipend, tuition remission, health care benefits, and other fringe benefits. In exchange for the compensation, TAs, TFs, GSAs and GSRs are required to perform teaching, research, and administrative support services. The terms and conditions of the relationship between the graduate students on academic appointment and the University are memorialized in a letter that every TA, TF, GSA and GSR receives. The University deducts income taxes from the graduate students' paychecks when they serve on academic appointments. The University may terminate academic appointments in cases of inadequate performance of assigned duties. These facts from the record are clear evidence of an employer-employee relationship. Additionally, TAs, TFs, GSAs and GSRs at the University have or expect to have an established relationship with the University for a period of at least one to five years or more as TAs, TFs, GSAs and GSRs are usually guaranteed for four to five years. Finally, there is no University requirement that graduate students accept academic appointments and work as TAs, TFs, GSAs, or GSRs in order to obtain a graduate degree<sup>5</sup>. Thus, graduate students on academic appointment serving as TAs, TFs, GSAs and GSRs are public employes pursuant to PERA.

Turning now to graduate students on fellowship and traineeship, the record in this matter shows that they are not public employes under PERA.

Graduate students on fellowship are not required to perform services such as teaching or research in return for funding. There is no work requirement. Since there is no requirement to perform services in exchange for a stipend and other benefits, graduate students on fellowship are not employes of the University and therefore also not public employes under PERA. This does not include Teaching Fellows (discussed above).

Based on the record as a whole, trainees are not public employes under PERA. Trainees are not required to provide services to the University in exchange for a stipend, a tuition scholarship, and other benefits. Additionally, if the Board were to find that the trainees were in fact employes of the University, to the extent trainees are employes, the federal agencies which administer these grants serve as joint employers of the trainees due to their control over the stipend levels, the work performed, and the power to terminate the programs. Harbor Creek School District, 20 PPER ¶ 20187 (Final Order, 1989). Since trainees would have joint employers, one of which is not a public employer pursuant to PERA, the trainees are not

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<sup>5</sup> A limited exception in the case of the English and Biology Departments discussed below on page 16-17, below.

public employes. Id. This conclusion only applies to graduate students on a trainee grant.

Since I have determined that graduate students on an academic appointment who serve as TAs, TFs, GSAs and GSRs are public employes under PERA, the next step is to determine the appropriate bargaining unit under PERA.

Section 604 of PERA provides, in relevant part, as follows:

The [B]oard shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the [B]oard shall:

(1) Take into consideration but shall not be limited to the following: (i) public employes must have an identifiable community of interest, and (ii) the effects of over fragmentation.

43 P.S. § 1101.604.

When determining whether employes share an identifiable community of interest, the Board considers such factors as the type of work performed, educational and skill requirements, pay scales, hours and benefits, working conditions, interchange of employes, grievance procedures, bargaining history, and employes' desires. West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours, working conditions, or other factors. Id.

In addition, the Board has long favored a policy of certifying broad-based units. In the Matter of the Employes of University of Pittsburgh, 16 PPER ¶ 16205 (Order Directing Amendment of or Request to Withdraw Petition for Representation, 1985) citing Athens Area School District, 10 PPER ¶ 10128 (Order and Notice of Election, 1978).

Differences among employes in a unit may reflect the division of labor at an employer and do not destroy a clearly identifiable community of interest. See In the Matter of the Employes of Wissahickon School District, 47 PPER ¶ 26 (Order Directing Submission of Eligibility List, 2015); In the Matter of the Employes of Temple University Health System Episcopal Hospital, 41 PPER 177 (Order Directing Submission of Eligibility List, 2010), citing Pennsylvania State University v. PLRB, 24 PPER ¶ 24117 (Court of Common Pleas of Centre County, 1993) (holding that the Board need not find an identical community of interest but merely an identifiable community of interest).

The general policy of the Board is "to certify units as broadly as possible in order to avoid the deleterious effects of over fragmentation." Berks County, 27 PPER ¶ 27110 (Final Order, 1996). The Board favors unit descriptions that use "including" language "so that unit clarification petitions need not be filed whenever an employe within the coverage of the unit is hired." Beaver County Community College, 23 PPER ¶ 23070 (Final Order, 1992), aff'd 24 PPER ¶ 24110 (1993).

Section 301(7) of PERA provides as follows:

"Professional employe" means any employe whose work: (i) is predominantly intellectual and varied in character; (ii) requires consistent exercise of discretion and judgment; (iii) requires knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent; and (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

43 P.S. § 1101.301(7). The test is conjunctive, and all four parts must be met in order for an employe to be deemed professional under PERA. In the Matter of the Employes of Luzerne County Community College, 37 PPER 47 (Final Order, 2006). The same factors (such as work performed, educational and skill requirements) that support professional status also support the conclusion that the employes in a proposed professional bargaining unit share an identifiable community of interest with the existing professional employes in the unit. In the Matter of the Employes of Temple University, 47 PPER ¶ 54 (Order Directing Submission of Eligibility List, 2015); In the Matter of the Employes of Temple University Health System Episcopal Hospital, 41 PPER 177 (Order Directing Submission of Eligibility List, 2010); In the Matter of the Employes of Riverview Intermediate Unit, 37 PPER 106 (Final Order, 2006).

The record shows that graduate students on an academic appointment who serve as TAs, TFs, GSAs and GSRs are professional employes under PERA. All graduate students on an academic appointment who serve as TAs, TFs, GSAs and GSRs are required to have a bachelor's degree or master's degree and their duties require consistent exercise of discretion and judgment. Their duties as TAs, TFs, GSAs and GSRs require knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent. Furthermore, the work accomplished cannot be standardized in relation to any given period of time.

Therefore, in this matter, the record shows a clear identifiable community of interest among the graduate students on academic appointment who serve as TAs, TFs, GSAs and GSRs. Examples of factors which show an identifiable community of interest from the record include: graduate students on an academic appointment who serve as TAs, TFs, GSAs and GSRs are all employed by the University; are professional employes; are paid a monthly stipend; have similar tuition scholarships; have access to similar health care benefits; have similar tax withholdings; are required to have at minimum a bachelor's degree; are required to be admitted students in residence and working towards a degree; primarily work at the University's Oakland campus in classrooms, laboratories, administrative and academic offices; are required to work similar hours; perform teaching, research, or administrative support services; are supervised and directed by faculty; and receive similar academic appointment letters.

Since there exists an identifiable community of interest among the graduate students on an academic appointment who serve as TAs, TFs, GSAs and GSRs, and mindful of the Board's policy of broad-based bargaining units, I find that, based on the record as a whole, that the unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of:

All full-time and regular part-time professional employes who are graduate students on academic appointment who serve as teaching assistants, teaching fellows, graduate student assistants and

graduate student researchers and excluding graduate students on fellowship and traineeship, management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.

. . .

Turning now to the University's arguments, the University argues that graduate students at the University are not public employes under PERA because the Board's decision in Temple University, 32 PPER ¶ (32044) is inconsistent with PAIR and must be rejected. (University's Brief at 54-81). However, I find that the Board clearly and fully distinguished PAIR and that the result in PAIR is not applicable to graduate assistants. I am bound to apply the Board's policy with respect to graduate assistants as found in Temple University, 32 PPER ¶ (32044) and Temple University, 32 PPER ¶ 32164. Thus, the University's argument on this ground is rejected.

The University argues that even if assuming that, *arguendo*, Temple University, 32 PPER ¶ 32044, is controlling, graduate assistants are still not public employees. (University's Brief at 82-92). The University argues:

In contrast to the Board's findings in Temple University, the evidence demonstrates that graduate students funded through academic appointments are: (1) in all cases required to perform research activities and, in many cases, required to perform teaching activities as a part of their curriculum and training; (2) given academic credit for teaching and research activities they engage in as part of their appointments and traineeships; (3) provided financial support irrespective of the amount of time they teach or perform research, or of the quality of their performance; and (4) the students' activities are for their benefit, not the University's. As such, even assuming that Temple University is controlling, the Union's petition still must be dismissed because the graduate students at Pitt are factually distinguishable from those at Temple.

(University's Brief at 82).

The University argues that "graduate students funded through academic appointments are: (1) in all cases required to perform research activities and, in many cases, required to perform teaching activities as a part of their curriculum and training." It further argues that ". . . graduate programs at Pitt fund graduate students through assistantships, traineeships, and fellowships to satisfy academic requirements of the degree program." *Id.* I disagree with the University's interpretation of the record. I find that it is clear from this record that performing work on an academic appointment as a TA, TF, GSA or GSR is not generally required to complete any educational requirements at the University. There is no University-wide requirement that anyone accept an academic appointment and perform work as a TA, TF, GSA or GSR to earn a degree. Further, I do not find that the record supports a conclusion that the University generally funds graduate students with academic appointments as TAs, TFs, GSAs or GSRs to "satisfy academic requirements of the degree program". Indeed, the record shows that graduate students with academic appointments as TAs, TFs, GSAs or GSRs have work requirements that exist in addition to the work required to complete their graduate education. There are two exceptions on this record that must be



addressed. The English department requires all Ph.D. students to teach two terms, which is completed while the student is on an academic appointment as a TA. This requirement is based primarily on the English Department's need for teachers to teach an undergraduate course with high enrollment (English Composition) and is thus distinguishable for the type of requirement considered in Temple University. Thus, this requirement does not defeat the English's Department's TAs' status as public employes.

The Biology Department requires students to be a TA for one semester. In the Spring of 2018, the Biology Department had four TAs appointed. Even assuming that the appointment of these four TAs was for educational reasons and not made for reasons similar to the English Department, the Biology Department requirement is not sufficient to remove these TAs from the class as in all other respects these employes share common attributes with other TAs, TFs, GSAs and GSRs. SSHE v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999); Commonwealth of Pennsylvania, PLRB v. AFSCME, 342 A.2d 155 (Pa. Cmwlth. 1975); In the Matter of the Employes of Commonwealth of Pennsylvania (Department of Corrections), 36 PPER 21 (Proposed Order of Dismissal, 2005) ("In deciding whether or not a large class of employes is eligible for representation under the Act, employes are to be treated the same as a class even though there might be some variance in the individual duties they perform.").

The University also argues that this record is distinguishable from Temple University because graduate students funded through academic appointments are "(2) given academic credit for teaching and research activities they engage in as part of their appointments and traineeships." The University further argues that "Unlike the students in Temple University, graduate students at Pitt are able to, and do, get academic credit for the teaching and research activities they engage in while on academic appointments." Id. at 86.

I disagree with the underlying premise of the University's argument that graduate students with academic appointments as TAs, TFs, GSAs or GSRs cannot be public employes because Temple University requires that they do not receive academic credit for their performance of TA, TF, GSA or GSR activities. The Board's Order Directing Remand notes: "[T]he Graduate Assistants do not receive academic credit for the performance of their duties." Temple University, 32 PPER ¶ 32044. The Board's Final Order notes: "The graduate assistants receive no academic credit for their performance of graduate assistant work." Temple University, 32 PPER ¶ 32164. I interpret these sentences in the Board's Orders to only reinforce the Board's focus on the fact that the graduate students were not receiving academic credit for being graduate assistants. In other words, it was important in those cases that the status of being a graduate assistant does not lead directly to academic credit. I do not interpret this language from the Board to mean that, if the work done by a graduate assistant happens to be correlated to a course which grants academic credit, the graduate assistant is disqualified as a public employee under PERA. Such a conclusion would run counter to the Board's conclusion that the receipt of academic benefit in connection with employment duties does not damage employe status under PERA. The Board view on this issue is elucidated in its Final Order when it positively cites New York University, 165 LRRM 1241 (2000), and writes:

The Employer also argues that the graduate assistants should be denied bargaining rights under PERA because their work as graduate

assistants, in some but not all instances, is tailored to their individual academic interests and provides them with academic training for their eventual careers. The NLRB in New York University addressed and rejected the same argument as follows:

We recognize that working as a graduate assistant may yield an educational benefit, such as learning to teach or research. But, surely the house staff work in Boston Medical Center affords an equal, if not greater, educational benefit, because that work, in part, provides training in furtherance of becoming certified in a medical specialty. Even in those circumstances, however, the Board determined that the fact that house staff "obtain educational benefits from their employment" is not inconsistent with employee status. Nor is it inconsistent here. Indeed, it is undisputed that working as a graduate assistant is not a requirement for obtaining a graduate degree in most departments. Nor is it a part of the graduate student curriculum in most departments. Therefore, notwithstanding any educational benefit derived from graduate assistants' employment, we reject the premise of the Employer's argument that graduate assistants should be denied collective bargaining rights because their work is primarily educational.

Temple University, 32 PPER ¶ 32164 (internal citations omitted). Thus, from the language of the Board's orders, I conclude a graduate assistant (or, in this case, a graduate student with an academic appointment as a TA, TF, GSA or GSR) is not disqualified as a public employe under PERA if he or she receives academic credit in connection to work performed as a graduate assistant.

The University argues that graduate students funded through academic appointments are: "(3) provided financial support irrespective of the amount of time they teach or perform research, or of the quality of their performance and (4) the students' activities are for their benefit, not the University's" and thus factually distinguishable from those at Temple. (University's Brief at 82). I reject this argument as I find that the record wholly establishes that graduate students with an academic appointment as a TA, TF, GSA or GSR are in fact required to provide substantial services which benefit the University in exchange for the financial benefits they receive. Furthermore, I do not agree with the University's premise that Temple University holds that if activities may benefit a graduate student, then their status as a public employe is defeated.

#### CONCLUSIONS

The Hearing Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The University is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties.

4. Graduate students on academic appointment who serve as teaching assistants, teaching fellows, graduate student assistants and graduate student researchers are public employes within the meaning of PERA.

5. Graduate students on academic appointment who serve as teaching assistants, teaching fellows, graduate student assistants and graduate student researchers share a community of interest.

6. Graduate students on fellowship or traineeship are not public employes within the meaning of PERA.

7. The unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of: All full-time and regular part-time professional employes who are graduate students on academic appointment who serve as teaching assistants, teaching fellows, graduate student assistants and graduate student researchers and excluding graduate students on fellowship and traineeship, management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.

**ORDER**

In view of the foregoing, and in order to effectuate the policies of the Act, the Hearing Examiner

**HEREBY ORDERS AND DIRECTS**

that the University shall within ten (10) days from the date hereof submit to the Board a current alphabetized list of the names and addresses of the employes eligible for inclusion in the unit set forth above.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that any exceptions to this decision and order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b).

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this seventh day of March, 2019.

PENNSYLVANIA LABOR RELATION BOARD



Stephen A. Helmerich, Hearing Examiner