

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-R-24-276-E
:
PENNSYLVANIA STATE UNIVERSITY :

FINAL ORDER

On December 4, 2024, the Coalition of Graduate Employees, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (Petitioner) filed a Petition for Representation pursuant to Section 603 of the Public Employee Relations Act (PERA) 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 professional employees of Pennsylvania State University (University), who are graduate students on graduate assistantship or traineeship and who perform services as teaching assistants, research assistants, or administrative support assistants. On January 8, 2025, the Secretary of the Board issued an Order and Notice of Hearing and assigned this matter to a Hearing Examiner. Hearings were held on June 2 through 6, 2025, at which time the parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

Following the submission of post hearing briefs, the Hearing Examiner issued an Order Directing Submission of Eligibility List (ODSEL) on August 18, 2025. In the ODSEL, the Hearing Examiner concluded that research assistants are public employees under the Board's decisions in Temple University, 32 PPER ¶ 32044 (Order Directing Remand to the Hearing Examiner for Further Proceedings, 2000) and Temple University, 32 PPER ¶ 32164 (Final Order, 2001) because (1) they receive compensation, tuition remission, and subsidized insurance in exchange for the performance of services; (2) they consistently work for more than one year; and (3) there is no requirement that the graduate students perform the work in order to obtain a graduate degree.¹ Therefore, the Hearing Examiner held that the unit appropriate for the purpose of collective bargaining is a unit comprised of all full-time and regular part-time professional employees who are graduate students on graduate assistantship and who perform services as teaching assistants, research assistants, or administrative support assistants; and excluding graduate students on fellowship, traineeship, management level employees, supervisors, first level supervisors, confidential employees and guards as defined in PERA. The list of eligible voters was received by the Board on October 2, 2025.

¹ The Hearing Examiner further held that graduate student trainees are not public employees because participation in a training grant requires trainees to complete specific academic requirements but does not impose additional weekly work or service responsibilities. Therefore, the Hearing Examiner concluded that graduate student trainees should be excluded from the bargaining unit. No exceptions were filed by the Petitioner to the Hearing Examiner's decision excluding graduate student trainees from the bargaining unit. 34 Pa. Code § 95.98(a)(3) ("[a]n exception not specifically raised shall be waived").

On October 3, 2025, an Order and Notice of Election was issued directing that on-site secret ballot elections be held at Penn State College of Medicine in Hershey on October 21, 2025, and at Penn State University Park on October 27, 28 and 29, 2025. The Order further directed that voting would be conducted by United States mail for employees working at Penn State Great Valley, Penn State Harrisburg and Penn State Behrend. An election, by secret ballot, was held as scheduled among graduate assistants of the University to ascertain the exclusive representative, if any, for the purpose of collective bargaining with respect to wages, hours and terms and conditions of employment. On November 13, 2025, the Board canvassed the ballots with the result of the election being 1,882 votes for the Petitioner, 198 votes for No Representative, 156 challenged ballots and 5 void ballots. The challenged ballots were not canvassed in that they could not have affected the outcome of the election.

On November 21, 2025, the Board issued a Nisi Order of Certification (NOC), certifying the Petitioner as the exclusive representative of all full-time and regular part-time professional employees who are graduate students on graduate assistantship and who perform services as teaching assistants, research assistants, or administrative support assistants. On December 11, 2025, the University filed timely exceptions and supporting brief to the Board's NOC, asserting that the Hearing Examiner erred in concluding in the ODSEL that graduate research assistants are public employees and should be included in the unit. Pursuant to an extension of time granted by the Secretary, the Petitioner filed a response to the exceptions and brief on January 14, 2026. Oral argument was directed by the Board and held on August 18, 2026.

The University offers financial support to its graduate students through graduate assistantships. (FF 8, 9, 128, 133, 138, 141, 142). In order to be eligible for graduate assistantships, graduate students must be enrolled as full-time students in a University graduate program and be in good academic standing. (FF 6). Graduate students on graduate assistantships receive a stipend, tuition remission and subsidized health insurance in exchange for performing service to the University as teaching assistants, administrative support assistants or research assistants for a set number of hours per week. (FF 5, 8, 9, 128, 133, 138, 141, 142). The graduate students who testified at the hearing indicated that they did not receive academic credit or a grade for the work they performed as research assistants. (FF 17, 27, 43, 79, 124).

While being funded is expected, a graduate student does not need to be funded to earn a PhD. It is possible for a graduate student to be funded by an outside industry or through a fellowship or training grant and not be on an assistantship. (FF 10, 14). The University does not require graduate students to work as a research assistant in order to earn a graduate degree. (FF 32, 126, 131, 137).

DISCUSSION

In its exceptions, the University initially challenges the Hearing Examiner's factual findings and asserts that they are not supported by substantial evidence of record. In particular, the University alleges that the Hearing Examiner erred in finding that the graduate research assistants who testified at the hearing performed work that is unrelated to their academic program and failed to credit the University's witnesses who

testified that all of the work performed by graduate research assistants is required to earn their degree.² It is well-settled that the Hearing Examiner's function is to resolve conflicts in evidence, make findings of fact from conflicting evidence, and draw inferences from those findings of fact. PLRB v. Kaufmann Department Stores, Inc., 29 A.2d 90 (Pa. 1942). The Hearing Examiner's decision will be upheld if the factual findings are supported by substantial and legally credible evidence, and the legal conclusions drawn from those facts are reasonable, and not capricious, arbitrary or illegal. Abington Transportation Association v. PLRB, 570 A.2d 108 (Pa. Cmwlth. 1990). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Lycoming County v. PLRB, 943 A.2d 333 (Pa. Cmwlth. 2007).

Further, absent the most compelling of circumstances, the Board defers to the credibility determinations of its hearing examiners. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections Pittsburgh SCI, 34 PPER 134 (Final Order, 2003). The hearing examiner may accept or reject the testimony of any witness in whole or in part. Id. Here, the Hearing Examiner credited the testimony of the Petitioner's witnesses that they did not receive credit or a grade for the work performed as a research assistant and that the work performed as a research assistant was not related to their academic interest or their dissertation topic. Because the Hearing Examiner's findings are supported by substantial evidence in the record and the University has failed to present any compelling reasons to warrant reversal of the Hearing Examiner's credibility determinations with regard to the challenged findings, the University's exception is dismissed.³

The University further alleges that the Hearing Examiner erred by failing to apply the test set forth in Philadelphia Association of Interns and Residents (PAIR) v. Albert Einstein Medical Center, 369 A.2d 711 (Pa. 1976), where the Pennsylvania Supreme Court held that medical interns, residents and clinical fellows at Temple University were not public employees under PERA because their primary purpose was to further their education and not for obtaining monetary remuneration. The University additionally argues that the Hearing Examiner erred in relying on the Board's decision in Temple University because it is inconsistent with the Supreme Court's decision in PAIR and should be overturned. Alternatively, the University alleges that, if the Board's decision in Temple University applies, the unit certified here is inconsistent with the Board's decision in that case because the research assistants at the University (1) are required to perform research as part of their curriculum and training; (2) are given academic credit for the research they perform; and (3) the research performed is for the benefit of the student, not the University. Therefore, the University asserts that under

² The University specifically excepts to Findings of Fact (FF) 41, 42, 43, 61, 64, 65, 66, 69, 71, 88, 95, 124 and 125.

³ The University also excepts to FF 53, 54, 55, 56, 70 and 74 and alleges that the Hearing Examiner erred in relying on Katherine Davis' testimony concerning her work as a teaching assistant to conclude that research assistants perform work unrelated to their academic program. A review of the record shows that all the testimony relied upon by the Hearing Examiner concerned work performed by Ms. Davis as a research assistant and thus, the University's exception is dismissed.

PAIR and Temple University the research assistants are not public employees under PERA and should be excluded from the graduate student bargaining unit.

In response, the Petitioner alleges that the Supreme Court's decision in PAIR only applied to the unique situation of the medical interns, residents and clinical fellows in that case and did not preclude all graduate students from being public employees under PERA. The Union further alleges that the Hearing Examiner properly relied on the Board's decision in Temple University and that the record supports the conclusion that the University's research assistants are public employees as they are not required to perform services as part of their educational curriculum nor do they earn credit for performing the research.

The relevant Board caselaw concerning the determination of whether students are public employees under Section 301(2) of PERA⁴ was first established by the Pennsylvania Supreme Court in the PAIR decision. The Board in PAIR held that medical interns, residents and clinical fellows at Temple University Hospital were employees under PERA because (1) they spent a majority of their time (85%-90%) in patient-care service; (2) were paid wages subject to federal income tax; (3) a small portion of their time (10%-15%) was spent in classroom instruction; and (4) many of the terms of their relationship with Temple carried an indicia of employee status. Relying on the National Labor Relations Board's (NLRB) decision in Cedars-Sinai Medical Center⁵, the Supreme Court disagreed and concluded that the interns, residents and clinical fellows primary purpose for providing patient services at Temple was to fulfill educational requirements and not for monetary gain. The Court further concluded that the purpose of PERA would not be served by permitting a bargaining unit of interns, residents and clinical fellows because they are not attempting to establish a continuous relationship with Temple as they leave after their educational requirements have been met. Therefore, the Court held that interns, residents and clinical fellows were not public employees under PERA and reversed the Board's decision.

In Temple University, the Board was tasked with applying the Supreme Court's decision in PAIR to the proposed bargaining unit of graduate students at Temple University to determine whether they were public employees under PERA. The petition for representation was initially dismissed by the Hearing Examiner who concluded that the graduate students were not public employees, relying on the PAIR decision. In vacating the Hearing Examiner's decision, the Board concluded that, unlike the facts in PAIR, the graduate students were not required to perform teaching or research services for Temple as part of their educational curriculum, they did not receive academic credit for the services performed and they had an established relationship with Temple for periods of one to five years. The Board further noted that the NLRB decision in Cedars-Sinai Medical Center that was relied upon by the Supreme Court in PAIR had been overturned by its decision in Boston Medical Center Corporation⁶. Accordingly, the Board held that the graduate students were

⁴ Section 301(2) of PERA defines a public employee as "any individual employed by a public employer" and lists certain exclusions from this definition such as management level and confidential employees. 43 P.S. § 1101.301(2).

⁵ 223 NLRB 251 (Decision and Order, 1976).

⁶ 330 NLRB 152 (Decision on Review and Direction of Election, 1999).

public employees under PERA and remanded the matter to the Hearing Examiner to determine the positions that should be included in the bargaining unit.

In lieu of further proceedings, the union and Temple entered into a Memorandum of Agreement stipulating to the unit composition.⁷ Finding the unit appropriate the Board Representative issued an Order and Notice of Election. After an election was held, the Board Representative issued a Nisi Order of Certification, which certified the bargaining unit of graduate students at Temple. Temple thereafter filed exceptions to the Board's conclusion that graduate assistants were public employees under PERA. Relying on its analysis in its Remand Order, the Board reaffirmed that graduate assistants are employees under PERA.

Initially, the Board reaffirms its decision in Temple University and finds that it is consistent with and accurately distinguishes the Supreme Court's decision in PAIR from the factual situation in Temple. Turning to the facts in this matter, the record shows that the University offers research assistantships to its graduate students in which the students receive compensation in the form of a stipend, tuition remission and subsidized health insurance in exchange for the performance of services for the University for a required number of hours per week. Every research assistant receives a Terms of Offer or Memorandum of Understanding drafted by the University, which details the student's work assignment for that semester, the required number of hours per week and what benefits they will receive for providing the work. Further, graduate students work as research assistants for more than one year and they do not receive academic credit or a grade for the work performed.

The University argues that the work performed by research assistants is necessary for the graduate students to earn their degree. However, graduate students can perform the same research through a fellowship or training grant both of which do not require students to perform services in order to receive financial assistance.⁸ Indeed, there is no requirement that graduate students perform work as research assistants in order to obtain a graduate degree.

⁷ The parties stipulated to the following bargaining unit:

All matriculated students enrolled full-time in a graduate degree program of study who, as teaching assistants, training grant holders, graduate assistants or research assistants, regularly, as part of services rendered to the University, perform one or more of the following services and do not receive a direct academic benefit for performing the services: (i) lecture, proctor, grade, instruct a laboratory, tutor or lead recitations (either alone or with a faculty member); or (ii) perform research (library, laboratory, field/survey or clinical) either alone or with a faculty member; and excluding all other teaching assistants, graduate assistants, research assistants, fellowship recipients, training grant holders, management level employees, supervisors, first level supervisors, confidential employees and guards as defined in the Act.

⁸ A fellowship is funding awarded to a particular student that does not have a required provision of services or work commitment attached to it. (N.T. 510-512, 515, 634, 1045-1046). A training grant is a type of fellowship that requires students to take additional courses in a particular area of study as part of the grant. (583-584, 660-661).

Therefore, unlike the medical interns, residents and clinical fellows in PAIR who were required to work at the hospital to obtain their degree, the graduate students here are not required to be a research assistant to perform research and can choose to be a fellow or trainee. Accordingly, research assistants are public employees under Section 301(2) of PERA. Temple University, supra.

The University additionally asserts that the Hearing Examiner's conclusion that research assistants share an identifiable community of interest with teaching assistants and administrative support assistants is not supported by the record. Section 604 of PERA provides, in relevant part, as follows:

The board 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 board shall:

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

43 P.S. §1101.604.

The Board has adopted a broad-based bargaining unit policy in finding an appropriate unit of employees. E.g., Chester Upland School District, 12 PPER ¶ 12179 (Final Order, 1981); In the Matter of the Employees of City of Wilkes-Barre, 50 PPER 1 (Final Order, 2018). A community of interest exists for collective bargaining despite differences among employees in wages, hours, working conditions, or other factors. West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000). Perfect uniformity in conditions of employment is not required for a community of interest. Id. Further, in assessing the appropriateness of the unit and the effects of over-fragmentization, factors to be considered by the Board may include "the type of work performed, educational and skill requirements, pay scales, hours and benefits, working conditions, interchange of employees, grievance procedures, and bargaining history." Id., 752 A.2d at 464.

In finding that the graduate students who are teaching assistants, administrative support assistants and research assistants share an identifiable community of interest, the Hearing Examiner stated as follows:

Thus, the record shows a clear identifiable community of interest among the graduate students on academic appointment who serve as teaching assistants, research assistants, and administrative support assistants. Factors which show an identifiable community of interest from the record include: graduate assistants are all professional employees, are all employed by the University; are all paid a monthly stipend; all have similar tuition remission; all have access to similar health care benefits; are all required to have at minimum a bachelor's degree; are all required to be admitted students in residence and working towards a graduate degree; all work at the University's campus in classrooms, laboratories, and academic offices; are all required to work similar hours; may perform duties as a teaching assistant and as a research assistant during the same academic year; are

supervised and directed by faculty; and all receive similar Terms of Offer and Memorandum of Understanding documents.

(PDO at 42). The Board finds that there is ample evidence in the record supporting the Hearing Examiner's conclusion that the positions at issue share an identifiable community of interest and constitute an appropriate bargaining unit for collective bargaining. As such, the University's exception on this issue is dismissed.

The University next argues that permitting collective bargaining between research assistants and the University is inconsistent with the purposes of PERA and could impede its academic judgment. Specifically, the University alleges that the research assistants could demand the right to bargain over academic issues including assignments, training opportunities and grades and that such demands will intrude upon the University's academic freedom. However, as aptly stated by the NLRB, "a graduate student may be both a student *and* an employee; a university may be both the student's educator *and* employer. By permitting the Board to define the scope of mandatory bargaining over 'wages, hours, and other terms and conditions of employment,' the [National Labor Relations Act] makes it entirely possible for these different roles to coexist--and for genuine academic freedom to be preserved." Columbia University, 364 NLRB 1080, 1086 (Decision on Review and Order, 2016) (emphasis in original). Similarly, here Sections 701 and 702 of PERA, and the balancing test under PLRB v. State College Area School District, 337 A.2d 262 (Pa. 1972), sufficiently differentiate between mandatory and permissive subjects of bargaining and does not "compel either party to agree to a proposal or require the making of a concession." 43 P.S. §§ 1101.701-1101.702. Therefore, the University's concern is misplaced.

Accordingly, after a thorough review of the exceptions, the briefs of the parties, and all matters of record, the Board shall dismiss the exceptions filed by the University and affirm the Nisi Order of Certification.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Pennsylvania State University are hereby dismissed and the Nisi Order of Certification be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, Gary Masino, Chairman, Albert Mezzaroba, Member, and William Trusky, Jr., Member, this twentieth day of October, 2026. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

MEMBER WILLIAM TRUSKY, JR., DID NOT PARTICIPATE IN THE CONSIDERATION OR DECISION OF THIS CASE.