Bd. of Trs. v. Ill. Educ. Labor Rels. Bd.

Appellate Court of Illinois, Fourth District

March 22, 2012, Filed

NO. 4-11-0836

Reporter
2012 IL App (4th) 110836 *; 966 N.E.2d 1239 **; 2012 Ill. App. LEXIS 197 ***; 359 Ill. Dec. 551 ****; 194 L.R.R.M. 2497

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, Petitioner-Appellant, v. THE ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD and UIC UNITED FACULTY, AFT-IFT, Respondents-Appellees.

Prior History: [*1]** Direct Administrative Review of the Illinois Educational Labor Relations Board. No. 11-RC-11-C.

Disposition: Reversed.

Core Terms

faculty, tenured, tenure-track, bargaining unit, comprised, includes, adjective, campus, half-time, non-supervisory, second paragraph, university campus, nontenure-track, faculty member, ambiguous, full-time, campus of the university, nontenured, sentence, words, college of medicine, interprets, dentistry, employees, pharmacy, programs, verb, legislative history, board of trustees, Public Act

Case Summary

Procedural Posture
Respondent Illinois Educational Labor Relations Board (Board) certified respondent union as the exclusive representative of a bargaining unit consisting of tenured, tenure-track, and nontenured faculty at a particular state university campus. Petitioner university trustees appealed.

Overview

The state university employed some 1,200 faculty members at one of its campuses, not counting the faculty in the colleges of medicine, dentistry, and pharmacy. Of the 1,200 faculty members, 800 were in the tenure system, and 400 were nontenured. The "tenure system" encompassed tenured faculty. Tenured faculty had achieved tenure and tenure-track faculty were in a probationary period working toward tenure. Nontenured faculty supported the tenured faculty, either through teaching or research, and were employed pursuant to annual employment contracts that do not automatically renew. The union filed with the Board a majority-interest petition, in which it sought to represent a proposed bargaining unit, at the Chicago campus, consisting of both tenure-system faculty and nontenured faculty, as contemplated by *Ill. Admin. Code tit. 80, § 1135.20(1)(b)* (2012). Eventually, the Board certified the proposed bargaining unit. The appellate court found that the second paragraph of *115 ILCS 5/7(a)* (2010) of the Illinois Educational Labor Relations Act forbade the inclusion of nontenured faculty in a unit containing tenured and tenure-track faculty, and, thus, made the contrary regulation void.

Outcome
The appellate court reversed the Board's decision.

LexisNexis® Headnotes

Labor & Employment Law > Collective Bargaining & Labor Relations > Bargaining Units

HN1[] **Collective Bargaining & Labor Relations, Bargaining Units**

See *Ill. Admin. Code tit. 80, § 1135.20(b)(1)* (2012).

Labor & Employment Law > Collective Bargaining & Labor Relations > Bargaining Units

HN2[] **Collective Bargaining & Labor Relations, Bargaining Units**

Before certifying the representative of a proposed bargaining unit, the Board must make sure the unit is "appropriate." *115 ILCS 5/7(a)* (2010). The first paragraph of *115 ILCS 5/7(a)* (2010) directs the Board to make case-by-case determinations of the appropriateness of proposed bargaining units. In doing so,

the Board is to consider 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.

Labor & Employment Law > Collective Bargaining & Labor Relations > Bargaining Units

HN3 **Collective Bargaining & Labor Relations, Bargaining Units**

When it comes to tenured and tenure-track faculty of the University of Illinois, the Board lacks authority to make case-by-case factual determinations of the appropriateness of bargaining units. The second paragraph of *115 ILCS 5/7(a)* (2010) withholds that authority from the Board. In lieu of the Board's deciding what will be an appropriate bargaining unit for tenured and tenure-track faculty of the university, the legislature has specified the composition of their appropriate unit.

Labor & Employment Law > Collective Bargaining & Labor Relations > Bargaining Units

HN4 **Collective Bargaining & Labor Relations, Bargaining Units**

See *115 ILCS 5/7(a)* (2010).

Labor & Employment Law > Collective Bargaining & Labor Relations > Bargaining Units

HN5 **Collective Bargaining & Labor Relations, Bargaining Units**

115 ILCS 5/7(a) (2010) refers to a unit that is comprised of non-supervisory academic faculty employed more than half-time and that includes all tenured and tenure-track faculty of that University campus.

Labor & Employment Law > Collective Bargaining & Labor Relations > Bargaining Units

HN6 **Collective Bargaining & Labor Relations, Bargaining Units**

"Include" ordinarily has a different meaning from "comprise." To be "comprised of" means to "be composed of" or to "consist of." "Include," by contrast, means "to take in or comprise as a part of a whole." It suggests the containment of something as a constituent, component, or subordinate part of a larger whole. It "indicates a partial list."

Administrative Law > Judicial Review > Standards of Review > Deference to Agency Statutory Interpretation

Administrative Law > Judicial Review > Standards of Review > General Overview

HN7 **Standards of Review, Deference to Agency Statutory Interpretation**

If the legislature has given an agency the responsibility of administering a statute and if the statute is ambiguous, a court should not simply interpret the statute on its own, as the court would do in the absence of an administrative interpretation; rather, the court should defer to the agency's interpretation if the interpretation is reasonably defensible. If the statute is ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Education Law > General Overview

Labor & Employment Law > Collective Bargaining & Labor Relations > General Overview

HN8 **Education Law**

The legislature has given the Illinois Educational Labor Relations Board the responsibility to administer the Illinois Educational Labor Relations Act, *115 ILCS 5/1 et seq.* (2010).

Civil Procedure > Appeals > Standards of Review > General Overview

Governments > Legislation > Interpretation

HN9 **Appeals, Standards of Review**

Where a statute is ambiguous, a reviewing court may consider legislative history.

Evidence > Inferences & Presumptions > Presumptions

Governments > Legislation > Effect & Operation > Amendments

Governments > Legislation > Interpretation

HN10[] **Inferences & Presumptions, Presumptions**

The amendment of a statute typically evinces a legislative intention to change the law, not to keep the law as it is. The normal presumption is that an amendment is intended to change the law as it formerly existed, rather than to reaffirm it Conversely, logic would suggest that, to the extent the amendment leaves words in the statute unchanged, the legislature must have intended those words to have the same meaning as before.

Syllabus

The Illinois Educational Labor Relations Board's certification of respondent union as the exclusive representative of a bargaining unit consisting of tenured, tenure-track and nontenured faculty at the Chicago campus of the University of Illinois was reversed on the ground that *section 7(a) of the Illinois Educational Labor Relations Act* prohibits the inclusion of nontenured faculty in a unit containing tenured and tenure-track faculty.

Counsel: R. Theodore Clark, Jr., and James J. Powers (argued), both of Clark Baird Smith LLP, of Rosemont, for petitioner.

Margaret Angelucci (argued) and Michele Cotrupe, both of Asher, Gittler & D'Alba, Ltd., of Chicago, for respondent UIC United Faculty, AFTIFT.

Lisa Madigan, Attorney General, of Chicago (Michael A. Scodro, Solicitor General, and Sharon A. Purcell (argued), Assistant Attorney General, of counsel), for respondent Illinois Educational Labor Relations Board.

Judges: JUSTICE APPLETON delivered the judgment of the court, with opinion. Justices Pope and Knecht concurred in the judgment and opinion.

Opinion by: APPLETON

Opinion

[*P1] **[**1240]** **[****552]** The Illinois Educational Labor Relations Board (Board)certified UIC United Faculty, AFT-IFT (the union), as the exclusive representative of a bargaining unit consisting of tenured, tenure-track, and nontenured faculty at the Chicago campus of the University of Illinois. The trustees of the university appeal because in their view, the second paragraph of *section 7(a)* of the Illinois Educational Labor Relations Act (*115 ILCS 5/7(a)* (West 2010)) forbids the inclusion of nontenured faculty in a unit containing tenured and tenure-track faculty. The legislative history of this ambiguous paragraph of *section 7(a)* convinces us that the university is correct. Therefore, we reverse the Board's decision.

[*P2] I. BACKGROUND

[*P3] A. The Distinction Between Tenure-System Faculty and Nontenured Faculty

[*P4] The university employs some 1,200 faculty members at the Chicago campus, **[**1241]** **[****553]** not counting the faculty in the colleges of medicine, dentistry, and pharmacy. Of these 1,200 **[***2]** faculty members, 800 are in the tenure system, and 400 are nontenured.

[*P5] The "tenure system" encompasses tenured faculty, *i.e.*, professors and associate professors, and tenure-track faculty, *i.e.*, assistant professors. Tenured faculty have achieved tenure (basically, lifetime employment), and tenure-track faculty are in a six-year probationary period, in which they are working toward tenure.

[*P6] Nontenured faculty support the tenured faculty, either through teaching or research, and they are employed pursuant to annual employment contracts that do not automatically renew. Consequently, they have little or no job security, in contrast to the tenured faculty.

[*P7] B. The Certification of a Bargaining Unit Containing Both Tenure-System Faculty and Nontenured Faculty

[*P8] On April 29, 2011, the union filed with the Board a majority-interest petition, in which it sought to represent a proposed bargaining unit, at the Chicago campus, consisting of both tenure-system faculty and nontenured faculty. The union's description of the proposed bargaining unit tracked the language of section 1135.20(b)(1) of the Board's regulations (*80 Ill. Adm. Code 1135.20(b)(1)* (2012)), which provided:

> HN1[] "(b) With respect to educational **[***3]** employees employed at the Chicago campus or employed in units located outside Chicago which report administratively to the Chicago campus, the following units shall be presumptively appropriate for collective bargaining:
>
> (1) Unit 1: All full-time (i.e., employees who have .51

> or greater appointment as a faculty member) tenured or tenure-track faculty; all full-time, nontenure-track faculty who possess a terminal degree appropriate to the academic unit in which the faculty member is employed; and all full-time, nontenure-track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms, but excluding all faculty members of the College of Pharmacy, the College of Medicine and the College of Dentistry."

[*P9] On July 12, 2011, after a two-day hearing, an administrative law judge issued a recommended decision certifying the proposed bargaining unit. The university filed exceptions to the recommended decision, and in a final decision on September 15, 2011, a three-member majority of the Board rejected the exceptions, with one board member dissenting. Board of Trustees of the University of Illinois, No. 2011-RC-0011-C (Ill. Educational **[***4]** Labor Relations Bd., Sept. 15, 2011) (unpublished 18-page slip opinion and order). The majority certified the union as the exclusive representative of the following bargaining unit at the Chicago campus:

> "INCLUDED: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenure or tenure-track faculty; all full-time, nontenure-track faculty who possess a terminal degree appropriate to the academic unit in which the faculty member is employed; and all full-time nontenure-track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms.
>
> EXCLUDED: All faculty members of the College of Pharmacy, the College of Medicine and the College of Dentistry. All Supervisors, Managerial and Confidential Employees as defined in the 'Act.'"

[*P10] **[**1242]** **[****554]** This appeal followed. See *115 ILCS 5/7(d)* (West 2010).

[*P11] II. ANALYSIS

[*P12] A. The Ambiguity in the Second Paragraph of *Section 7(a)*

[*P13] *HN2*[↑] Before certifying the representative of a proposed bargaining unit, the Board must make sure the unit is "appropriate." *115 ILCS 5/7(a)* (West 2010). The first paragraph of *section 7(a)* directs the Board to make case-by-case determinations of the **[***5]** appropriateness of proposed bargaining units. In doing so, the Board is to consider "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." *Id.*

[*P14] *HN3*[↑] When it comes to tenured and tenure-track faculty of the University of Illinois, however, the Board lacks authority to make case-by-case factual determinations of the appropriateness of bargaining units. The second paragraph of *section 7(a)* (*115 ILCS 5/7(a)* (West 2010)) withholds that authority from the Board. In lieu of the Board's deciding what will be an appropriate bargaining unit for tenured and tenure-track faculty of the university, the legislature has specified the composition of their appropriate unit. The second paragraph of *section 7(a)* provides as follows:

> *HN4*[↑] "The sole appropriate bargaining unit for tenured and tenure-track academic faculty at each campus of the University of Illinois shall be a unit that is comprised of non-supervisory academic faculty employed more than **[***6]** half-time and that includes all tenured and tenure-track faculty of that University campus employed by the board of trustees in all of the campus's undergraduate, graduate, and professional schools and degree and non-degree programs (with the exception of the college of medicine, the college of pharmacy, the college of dentistry, the college of law, and the college of veterinary medicine, each of which shall have its own separate unit), regardless of current or historical representation rights or patterns or the application of any other factors. Any decision, rule, or regulation promulgated by the Board to the contrary shall be null and void." *115 ILCS 5/7(a)* (West 2010).

[*P15] The controversy in this case is over the meaning of the first sentence in the above-quoted text, specifically, the two adjective clauses, the "that" clauses, modifying the predicate noun, "a unit." *HN5*[↑] *Section 7(a)* refers to "a unit that is comprised of non-supervisory academic faculty employed more than half-time and that includes all tenured and tenure-track faculty of that University campus." *115 ILCS 5/7(a)* (West 2010). The Board interprets the first adjective clause ("that is comprised of non-supervisory academic **[***7]** faculty employed more than half-time") as describing the whole of the bargaining unit and the second adjective clause("that includes all tenured and tenure-track faculty of that University campus") as describing only a part of the whole. The university, on the other hand, interprets the second adjective clause as describing the whole of the bargaining unit: it is composed of all the tenured and tenure-track faculty of the campus—and it excludes everyone else.

[*P16] The Board argues that the university's interpretation suffers from two flaws. First, it contradicts the ordinary

meaning of "include." See *Wahlman v. C. Becker Milling Co., 279 Ill. 612, 622, 117 N.E. 140 (1917)* (words in a statute should be given **[**1243]** **[****555]** their ordinary meaning unless the statute specially defines them); *Gekas v. Williamson, 393 Ill. App. 3d 573, 579, 912 N.E.2d 347, 332 Ill. Dec. 161 (2009)* (same). ***HN6***[↑] "Include" ordinarily has a different meaning from "comprise." To be "comprised of" means to be "be composed of" or to "consist of." New Fowler's Modern English Usage 168 (R.W. Burchfield ed., 3d ed. 1996). "Include," by contrast, means "to take in or comprise *as a part* of a whole." (Emphasis added.) Merriam-Webster's Collegiate Dictionary 587 (10th ed. 2000). It "suggests the **[***8]** containment of something as a constituent, component, or subordinate part of a larger whole." *Id.* It "indicates a partial list." Black's Law Dictionary 766 (7th ed. 1999). See also *Paxon v. Board of Education of School District No. 87, 276 Ill. App. 3d 912, 920, 658 N.E.2d 1309, 213 Ill. Dec. 288 (1995)* ("We, too, find the word 'including,' in its commonly understood meaning, to be a term of enlargement, not of limitation."); *Puerto Rico Maritime Shipping Authority v. Interstate Commerce Comm'n, 645 F.2d 1102, 1112 n.26, 207 U.S. App. D.C. 177 (D.C. Cir. 1981)* ("It is hornbook law that the use of the word 'including' indicates that the specified list *** is illustrative, not exclusive."); New Oxford American Dictionary 859 (2001) (defining "include" as "comprise or contain as part of a whole"); Bill Bryson, Bryson's Dictionary of Troublesome Words 105 (2002) ("[The word 'includes'] indicates that what is to follow is only part of a greater whole. To use it when you are describing a totality is sloppy ***.").

[*P17] Second, the Board observes that if, as the university contends, both the first adjective clause and the second adjective clause describe the totality of the bargaining unit, it is unclear why two adjective clauses were needed. See *Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 509, 804 N.E.2d 499, 281 Ill. Dec. 534 (2004)* **[***9]** (statutes should be interpreted in such a way that no word, clause, or sentence is rendered superfluous). Surely, the legislature did not deem it necessary to inform the reader that the "tenured and tenure-track academic faculty" to which it referred in the prepositional phrase at the beginning of the sentence were, in the words of the first adjective clause, "academic faculty." If the second adjective clause, like the first, is supposed to describe the totality of the bargaining unit, the legislature could have more easily and more concisely said: "The sole appropriate bargaining unit for tenured and tenure-track academic faculty at each campus of the University of Illinois shall be a unit comprised of all the nonsupervisory tenured and tenure-track faculty of that university campus who are employed more than half-time." But that is not what the legislature said. Instead, in one adjective clause, the legislature referred to the unit's being "comprised of" academic faculty employed more than half-time, and in the other adjective clause, the legislature referred to the "inclusion" of all tenured and tenure-track faculty in the unit. If the legislature intended "includes" to have the **[***10]** same meaning as "is comprised of," it is unclear why the legislature used both verbs in side-by-side clauses modifying the same predicate noun. The natural inference is that the legislature intended the two verbs, "comprised" and "includes," to have different meanings.

[*P18] Even so, the university argues that the Board's interpretation has a couple of problems as well. First, the university suggests that giving the word "includes" its plain meaning—as signifying "a subset of a larger universe of possible items"—would reduce the sentence to a tautology. The university explains:

> "The problem with the Board's interpretation is that it merely states the obvious—*of course* tenured and tenure-track **[**1244]** **[****556]** faculty will belong to a tenured and tenure-track bargaining unit. Otherwise, it would not be a 'tenured and tenure-track' unit! In this regard, the Board's interpretation of 'includes' as the containment of something as a constituent, component, or subordinate part of a larger whole makes no sense, because the subject and object of the sentence are identical.
>
> Did the General Assembly truly believe, as the Board implicitly argues, that one might overlook the inclusion of 'tenured and tenure-track' faculty **[***11]** when crafting the sole appropriate bargaining unit for 'tenured and tenure-track faculty?' Such an assertion is nonsensical. Therefore, the Board's interpretation effectively renders the second phrase 'includes tenured and tenure-track faculty' superfluous, which is prohibited when interpreting statutory language. *See Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 509, 804 N.E.2d 499, 281 Ill. Dec. 534 (2004)* (statutes must be interpreted 'so that each word, clause, or sentence is given reasonable meaning and not deemed superfluous or void')." (Emphasis in original.)

[*P19] It is true that when interpreting a statute, we should strive to give effect to each word. In its argument, however, the university violates that rule of construction by overlooking the modifiers that precede and follow "tenured and tenure-track faculty of that University campus." To be sure, the following statement—which is shorn of significant modifiers—would be a tautology: "The sole appropriate bargaining unit for tenured and tenure-track academic faculty at each campus shall be a unit that includes tenured and tenure-track faculty of that university campus." But that is not what the statute says. Instead, the statute says:

> "The sole appropriate **[***12]** bargaining unit for tenured and tenure-track academic faculty at each campus *** shall be a unit *** that includes *all* tenured and tenure-track faculty of that University campus *employed by the board of*

trustees in all of the campus's undergraduate, graduate, and professional schools and degree and non-degree programs ***." (Emphases added.) 115 ILCS 5/7(a) (West 2010).

The adjective "all" and the participial phrase "employed by the board of trustees in all of the campus's undergraduate, graduate, and professional schools and degree and non-degree programs" prevent the use of "includes," in its ordinary sense, from resultingin a tautology. By these modifiers, the legislature put a limit on the fragmentation of tenured and tenure-track faculty into separate bargaining units. The tenured and tenure-track faculty at each campus shall not be fragmented into a unit for the sciences and a unit for the humanities, for example, or into a unit for graduate programs and a unit for undergraduate programs. The only permissible intercampus fragmentation of tenured and tenure-track faculty is expressed in the parentheses in section 7(a) ("(with the exception of the college of medicine, the college **[***13]** of pharmacy, the college of dentistry, the college of law, and the college of veterinary medicine, each of which shall have its own separate unit)"). 115 ILCS 5/7(a) (West 2010). So, contrary to the university's argument, allowing "include" to have its plain meaning, as "indicat[ing] a partial list" (Black's Law Dictionary 766 (7th ed. 1999)), would not result in a tautology.

[*P20] Nevertheless, the second criticism that the university makes against the Board's interpretation is a valid one. In the Board's interpretation, the sentence in question sets out to describe "*[t]he sole* appropriate bargaining unit"—that is, the one and only appropriate bargaining **[**1245]** **[****557]** unit—"for tenured and tenure-track academic faculty at each campus of the University of Illinois," but then the sentence ends up describing, in the subject complement, a type of bargaining unit of which there could be multiple exemplars: "a unit that is comprised of non-supervisory academic faculty employed more than half-time and that includes all tenured and tenure-track faculty of that University campus." (Emphasis added.) 115 ILCS 5/7(a) (West 2010). Thus, "[t]he sole appropriate bargaining unit" is a unit that is composed of nonsupervisory **[***14]** faculty employed more than half-time. Because the statute does not say "a unit that is comprised of *all* nonsupervisory faculty employed more than half-time," different compositions of bargaining units could meet the description: for example, all full-time faculty; or only those full-time faculty members who have terminal degrees; or only those full-time faculty members who either have terminal degrees or who are clinical professors (the list could go on). So, after setting out to describe "[t]he sole appropriate bargaining unit," the statute provides a description to which multiple theoretical bargaining units, of differing compositions, could conform—as if to say, "The sole appropriate bargaining unit is A or B or C, et cetera: take your pick."

[*P21] The university proposes an interpretation that would make this conflict between the complete subject ("[t]he sole appropriate bargaining unit") and the subject complement go away. The university interprets the verb "includes," in the second adjective clause, as being "restrictive": "that includes all tenured and tenure-track faculty of that University campus"—and no one else. 115 ILCS 5/7(a) (West 2010). In other words, "includes" means "is **[***15]** comprised of," in the university's interpretation. There could be only one bargaining unit *comprised of* all the nonsupervisory tenured and tenure-track faculty employed more than half-time at a campus.

[*P22] In sum, something can be said for and against the university's interpretation, just as something can be said for and against the Board's interpretation. On the one hand, the university cures the conflict between the complete subject ("[t]he sole bargaining unit") and the subject complement ("a unit that is comprised of non-supervisory academic faculty employed more than half-time and that includes all tenured and tenure-track faculty of that University campus")—but at the price of redefining "includes" to mean "is comprised of" even though, improbably for such an interpretation, the legislature uses the construction "is comprised of" in the immediately preceding adjective clause. The Board, on the other hand, is faithful to the ordinary meaning of the two adjective clauses, including the word "includes"—but at the price of accepting a conflict between the complete subject and the subject complement. No matter which of the two interpretations one chooses, one ends up sacrificing some **[***16]** language in the statutory text. Consequently, we hold that the second paragraph of section 7(a) is ambiguous.

[*P23] B. Legislative History

[*P24] HN7[↑] If the legislature has given an agency the responsibility of administering a statute and if the statute is ambiguous, a court should not simply interpret the statute on its own, as the court would do in the absence of an administrative interpretation; rather, the court should defer to the agency's interpretation if the interpretation is reasonably defensible. Quality Saw & Seal, Inc. v. Illinois Commerce Comm'n, 374 Ill. App. 3d 776, 782, 871 N.E.2d 260, 312 Ill. Dec. 860 (2007); Illinois Bell Telephone Co. v. Illinois Commerce Comm'n, 362 Ill. App. 3d 652, 657, 840 N.E.2d 704, 298 Ill. **[**1246]** **[****558]** Dec. 591 (2005). In the words of the Supreme Court, "if the statute is *** ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984).

[*P25] The agency in this case is, of course, the Illinois

Educational Labor Relations Board, which, in the decision under appeal, has construed a statute that HN8[↑] the legislature has given it the responsibility to administer, the **[***17]** Illinois Educational Labor Relations Act (115 ILCS 5/1 through 21 (West 2010)). See 115 ILCS 5/5(i) (West 2010). A provision of that statute, the second paragraph of section 7(a) (115 ILCS 5/7(a) (West 2010)), is ambiguous for the reasons we have explained. We consider the Board's interpretation of this ambiguous provision to be reasonable in light of the statutory language. The university's interpretation likewise is reasonable. Our duty of deference would tilt the scales in the Board's favor if the text of the current version of the statute were all that we considered. HN9[↑] Because the statute, however, is ambiguous, we may consider legislative history (see County of Du Page v. Illinois Labor Relations Board, 231 Ill. 2d 593, 607, 900 N.E.2d 1095, 326 Ill. Dec. 848 (2008)), and as we will explain, the legislative history clearly forecloses the Board's interpretation of section 7(a) (see Chemical Manufacturers Ass'n v. Natural Resources Defense Council, Inc., 470 U.S. 116, 126, 105 S. Ct. 1102, 84 L. Ed. 2d 90 (1985)).

[*P26] 1. *Public Act 89-4*

[*P27] Before 1996, section 7(a) of the Illinois Educational Labor Relations Act consisted of a single paragraph, which was nearly identical to the first paragraph of section 7(a) in its present form. Effective January 1, 1996, **[***18]** Public Act 89-4 (Pub. Act 89-4, § 50-243 (eff. Jan. 1, 1996) (1995 Ill. Laws 14, 239)) added a second paragraph to section 7(a), and this second paragraph (unlike the current version of the second paragraph) provided that the only appropriate bargaining unit for faculty of the University of Illinois was a unit that "included" all the tenured, tenure-track, and nontenure-track faculty of the university. The paragraph added by Public Act 89-4 read as follows:

> "The sole appropriate bargaining unit for academic faculty at the University of Illinois shall be a unit that is comprised of non-supervisory academic faculty employed more than half-time and that includes all tenured, tenure-track, and nontenure-track faculty employed by the board of trustees of that University in all of its undergraduate, graduate, and professional schools and degree and non-degree programs, regardless of current or historical representation rights or patterns or the application of any other factors. Any decision, rule, or regulation, promulgated by the Board to the contrary shall be null and void." 115 ILCS 5/7(a) (West 1996).

[*P28] The grammatical structure of this quoted paragraph should be familiar by now: the complete **[***19]** subject ("[t]he sole appropriate bargaining unit"), an auxiliary verb and linking verb ("shall be"), and the predicate noun ("a unit"), followed by two restrictive adjective clauses ("that is comprised of non-supervisory academic faculty employed more than half-time and that includes all tenured, tenure-track, and nontenure-track faculty"). As in the present form of section 7(a), the first adjective clause used the verb "is comprised," and the second adjective clause used the verb "includes."

[*P29] But look at the second adjective clause: it refers to "all tenured, tenure-track, **[**1247]** **[****559]** and nontenure-track faculty." What other kinds of "academic faculty" are there? There are no others. These three categories are an exhaustive description of the faculty of the University of Illinois—and they are the direct object of "includes." Consequently, in this earlier version of the second paragraph of section 7(a), "includes" evidently did not mean "the containment of something as a constituent, component, or subordinate part of a larger whole." Merriam-Webster's Collegiate Dictionary 587 (10th ed. 2000). Rather, "includes" was synonymous with "is comprised of." See New Oxford American Dictionary 859 (2001) **[***20]** ("*Include can be used in [the same] way [as comprise]*, but it is also used in a nonrestrictive way, implying that there may be other things not specifically mentioned that are part of the same category." (Emphasis added.)); New Fowler's Modern English Usage 387 (R.W. Burchfield ed., 3d ed. 1996) ("With *include*, there is no presumption (*though it is often the fact*) that all or even most of the components were mentioned ***." (Emphasis in original and added.)).

[*P30] 2. *Public Act 93-445*

[*P31] Effective January 1, 2004, Public Act 93-445 (Pub. Act 93-445, § 5 (eff. Jan. 1, 2004) (2003 Ill. Laws 3098, 3099)) amended the second paragraph of section 7(a) so that it no longer described the appropriate bargaining unit for the entire "academic faculty" of the University of Illinois as a whole but instead described the appropriate unit for "tenured and tenure-track academic faculty" at each campus of the university. We will indicate the additions by underlining and the deletions by strikeout:

> "The sole appropriate bargaining unit for tenured and tenure-track academic faculty at each campus of the University of Illinois shall be a unit that is comprised of non-supervisory academic faculty employed more than **[***21]** half-time and that includes all tenured and,
> - tenure-track ,
>
> and nontenure track faculty of that University campus employed by the board of trustees of that University in all of the campus's its undergraduate, graduate, and professional schools and degree and non-degree programs

(with the exception of the college of medicine, the college of pharmacy, the college of dentistry, the college of law, and the college of veterinary medicine, each of which shall have its own separate unit), regardless of current or historical representation rights or patterns or the application of any other factors. Any decision, rule, or regulation

, promulgated by the Board to the contrary shall be null and void." Pub. Act 93-445, § 5 (eff. Jan. 1, 2004).

[*P32] As the university points out, HN10[↑] the amendment of a statute typically evinces a legislative intention to change the law, not to keep the law as it is. "[T]he normal presumption is that an amendment is intended to change the law as it formerly existed, rather than to reaffirm it ***." *Saltiel v. Olsen, 77 Ill. 2d 23, 29, 394 N.E.2d 1197, 31 Ill. Dec. 820 (1979)*. See also *KSAC Corp. v. Recycle Free, Inc., 364 Ill. App. 3d 593, 597, 846 N.E.2d 1021, 301 Ill. Dec. 418 (2006)* ("[W]hen the General Assembly amends a statute by deleting **[***22]** certain language, it is presumed to have intended to change the law in that respect."). Conversely, logic would suggest that, to the extent the amendment leaves words in the statute unchanged, the legislature must have intended those words to have the same meaning as before. Therefore, "includes" has the same meaning in the current version of *section 7(a)* as it had in the previous version: it means "is comprised of," signifying a complete list of the "academic faculty" in "[t]he sole appropriate bargaining unit." By deleting the words "and **[**1248]** **[****560]** nontenure-track" from the second adjective clause, the legislature presumably intended to change the law by providing that the sole appropriate bargaining unit for tenured and tenure-track faculty of a campus would consist only of the tenured and tenure-track faculty of that campus.

[*P33] The remarks of Senator Maloney during the third reading of Senate Bill 1360 strengthen this presumption. See *Krohe v. City of Bloomington, 204 Ill. 2d 392, 398, 789 N.E.2d 1211, 273 Ill. Dec. 779 (2003)* (legislative history and debates are valuable aids in the interpretation of an ambiguous statute); *Illinois Native American Bar Ass'n (INABA) v. University of Illinois, 368 Ill. App. 3d 321, 327, 856 N.E.2d 460, 305 Ill. Dec. 655 (2006)* ("The **[***23]** statements of a bill's sponsor matter when determining legislative intent."). Senator Maloney sponsored Senate Bill 1360, which became Public Act 93-445. He explained to his colleagues in the Senate: "Senate Bill 1360 gives the option to tenure and tenure-track faculty under the auspices of the University of Illinois—that is the campuses at Springfield, Urbana-Champaign and Chicago—the choice of whether or not they want to form a collective bargaining unit." 93d Ill. Gen. Assem., Senate Proceedings, Apr. 4, 2003, at 112 (statements of Senator Maloney). Again he said: "It—it allows the full-time tenure and tenure-track faculty at each of the campuses the option of whether or not they want to form a collective bargaining unit." *Id.* at 113. Thus, the topic of discussion was the formation of bargaining units by tenured and tenure-track faculty at each campus of the University of Illinois. If the senators had contemplated that nontenure-track faculty would be in the bargaining units as well, it is unclear why they would have discussed only the formation of such units by tenured and tenure-track faculty.

[*P34] Therefore, even though the Board's and the university's interpretations of the second **[***24]** paragraph of *section 7(a)* (*115 ILCS 5/7(a)* (West 2010)) seem equally reasonable when one considers only the ambiguous text of the statute, the legislative history and the discussion on the Senate floor—but especially the legislative history—clearly show that the Board's interpretation is contrary to the legislative intent. The legislature apparently intended that the sole appropriate bargaining unit for tenured and tenure-track faculty at each campus of the University of Illinois would be comprised exclusively of all the nonsupervisory tenured and tenure-track faculty at the campus who were employed more than half-time (except for the college of medicine, the college of pharmacy, the college of dentistry, the college of law, and the college of veterinary medicine, each of which would have its own separate unit) and that nontenure-track faculty would be excluded from the unit. Because section 1135.20(b)(1) of the Board's regulations (*80 Ill. Adm. Code 1135.20(b)(1)* (2012)) contradicts *section 7(a)* in that respect, section 1135.20(b)(1) is "null and void." *115 ILCS 5/7(a)* (West 2010).

[*P35] III. CONCLUSION

[*P36] For the foregoing reasons, we reverse the Board's decision.

[*P37] Reversed.

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2011 IL ERB LEXIS 79; 28 PERI P140

Illinois Educational Labor Relations Board

September 15, 2011

Case No. 2011-RC-0011-C

Illinois Educational Labor Relations Board

Reporter
2011 IL ERB LEXIS 79 *; 28 PERI P140

In the Matter of: Board of Trustees of the University of Illinois, Employer, and UIC United Faculty, AFT-IFT, AAUP, Petitioner.

Core Terms

faculty, tenure, track, non-tenure, bargaining unit, faculty member, teach, campus, tenure-track, terminal, was, has, full-time, graduate, college of medicine, statutory language, nontenure-track, appointment, sabbatical, clinical, pharmacy, bargain, campus of the university, undergraduate, supervision, instructor, comprise

Panel: [*1] Gilbert O'Brien, Member; Michael H. Prueter, Member; Michael K. Smith, Member; Lynne O. Sered, Chairman

Opinion

OPINION AND ORDER

I. STATEMENT OF THE CASE

On April 29, 2011, the UIC United Faculty, AFT-IFT, AAUP ("Union") filed a majority interest representation petition with the Illinois Educational Labor Relations Board ("IELRB") pursuant to Section 7(a) of the Illinois Educational Labor Relations Act, *115 ILCS 5/1* et seq. ("Act") seeking to represent the following unit of employees employed by the the Board of Trustees of the University of Illinois at University of Illinois-Chicago ("University"):

> **INCLUDED**: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured or tenure-track faculty; all full-time, nontenure-track faculty who possess a terminal degree appropriate to the academic unit in which the faculty member is employed; and all full-time nontenure-track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms.
>
> **EXCLUDED**: All faculty members of the College of Pharmacy, the College of Medicine and the College **[*2]** of Dentistry. All Supervisors, Managerial and Confidential Employees as defined in the "Act".

A hearing in this matter was conducted on June 1 and 2, 2011. The Administrative Law Judge issued a Recommended Decision and Order on July 12, 2011. The University filed timely exceptions to the Administrative Law Judge's Recommended Decision and Order, together with a supporting brief. The Union filed a timely response to the University's exceptions and supporting brief.

II. FINDINGS OF FACT

During the hearing, three witnesses testified on behalf of the University: University Interim Vice-Chancellor for Academic Affairs and Provost Jerry Bauman ("Bauman"); University Director for Faculty Affairs, HR in the Office of the Vice Provost for Faculty Affairs Angela Yudt ("Yudt"); and University Vice-Provost for Faculty Affairs Mo-Yin Tom ("Tam"). Seven witnesses testified on behalf of the Union: University non-tenure track faculty members Mary R. Brown ("Brown") and Geraldine Gorman ("Gorman"); and University tenure system faculty members Darold Barnum ("Barnum"), John Shuler ("Shuler"), Laurie Schaffner ("Schaffner"), Victoria Persky ("V. Persky"), and Joseph Persky ("J. Persky"). **[*3]**

The University is an educational employer within the meaning of Section 2(a) of the Act. The Union is a labor organization within the meaning of Section 2(c) of the Act. By the petition in this case, the Union seeks to represent a bargaining unit consisting of faculty members at the University's Chicago campus. The members of the proposed bargaining unit work in a variety of the Employer's colleges and departments within those colleges. The petition excludes faculty members in the Colleges of Medicine, Dentistry, and Pharmacy.

The University of Illinois at Chicago is a very intensive research university, and relies on its research productivity for its reputation. The University's faculty bring in the grants and produce the research. Bauman testified that the University's research mission is driven by its tenure system faculty.

Generally, tenure track faculty must complete a six-year probationary period prior to achieving tenured status. Bauman testified that attaining tenured status means lifetime job security: that once tenure is awarded to a tenure system faculty member, the University has essentially made a lifetime commitment to that employee; and that a tenured tenure system **[*4]** faculty member's contract will be repetitively renewed.

The various types of non-tenure track faculty appointments include clinical faculty, research faculty, lecturers and instructors, and visiting and adjunct faculty. Bauman testified that clinical faculty are mainly practitioners. He testified that non-tenure track research faculty predominantly do research and might work for a tenure system faculty member. Bauman also testified that instructors and lecturers are hired for the specific task of teaching courses. Although not eligible for tenure, clinical and research non-tenure track faculty are eligible for promotion within their respective tracks. Ranks held by non-tenure track clinical faculty are instructor, assistant professor, associate professor, and professor. Ranks held by non-tenure track research faculty are assistant professor, associate professor, and professor.

Some non-tenure track faculty work under annual contracts, whereas other non-tenure track faculty have multi-year contracts. Contracts are not automatically renewed, and non-tenure track faculty members do not have guaranteed employment beyond the term of their particular contract. Bauman testified that, compared **[*5]** to tenured tenure system faculty, non-tenure track faculty have very little job security. However, non-tenure track faculty member Brown has been employed by the University for 17 years and non-tenure track faculty member Gorman has been employed by the University for 9 years.

Tenure system faculty are required to have a terminal degree, that is, the highest degree achievable in a given field. Clinical and research non-tenure track faculty are also required to have a terminal degree. Lecturer and instructor non-tenure track faculty are not required to have a terminal degree. Shuler and V. Persky each testified that non-tenure track faculty in their departments hold the same terminal degree as tenure system faculty.

Teaching responsibilities for non-tenure track and tenure system faculty are the same in the College of the University Library. In the College of Business Administration, non-tenure track faculty teach undergraduate and graduate courses also taught by tenure system faculty. The level of supervision is the same for non-tenure track faculty as it is for tenure system faculty teaching courses in the College of Business Administration. Non-tenure track faculty member Brown **[*6]** currently teaches a Finance 300 class in the College of Business Administration's Department of Finance. Tenure system faculty teach other sections of that course. Brown teaches undergraduate and graduate level courses.

Non-tenure track faculty teach the same courses as tenure system faculty in the School of Public Health's Division of Epidemiology. The responsibilities for teaching a particular course in the School of Public Health's Division of Epidemiology are the same for tenure system faculty as they are for non-tenure track faculty. Non-tenure track faculty and tenure system faculty teach the same courses in the College of Liberal Arts' Department of Economics, including upper-level graduate courses. Non-tenure track faculty teach the same courses as tenure system faculty in the College of Nursing. This includes graduate level

courses, undergraduate courses, and graduate entry level program courses. When non-tenure track faculty are teaching the same course as tenure system faculty in the College of Nursing, the requirements are not any different.

Barnum, Brown, and V. Persky each testified and gave examples of non-tenure track faculty teaching courses taught by tenure system **[*7]** faculty when tenure system faculty go on sabbatical, leave, and break. Tenure system faculty members may be granted sabbatical leaves of absence, whereas non-tenure track faculty are generally not entitled to apply for and take sabbatical leave.

The offices of tenure system and non-tenure track faculty in the College of Business Administration's Departments of Managerial Studies and Finance, the School of Public Health's Division of Epidemiology, and College of Nursing are intermingled. Tenure system faculty in the College of Business Administration's Department of Managerial Studies attend training with non-tenure track faculty. Tenure system faculty and non-tenure track faculty in the College of Nursing and the College of the University Library teach courses jointly. Bauman, Barnum, Shuler, V. Persky, Schaffner, and Gorman all testified that tenure system faculty and non-tenure track faculty work together in obtaining grants.

The University Statutes envision that tenure system faculty may open membership on various committees to non-tenure track faculty. There are tenure system and non-tenure track faculty who sit on committees composed of both tenure system and non-tenure track **[*8]** faculty with equal voting rights. Both tenure system and non-tenure track faculty members serve as committee chairs and co-chairs. Bauman testified that the tenure system faculty must take action to allow non-tenure track faculty to serve on committees.

Tenure system faculty and non-tenure track faculty are supervised by their department heads. Generally, the salary of non-tenure track faculty is lower than the salary of tenure system faculty. However, other than eligibility for sabbatical leave, the benefits of tenure system and non-tenure track faculty are the same, including three retirement plan options; insurance and health care, including options for vision and dental insurance; same-sex domestic partner insurance coverage; accidental death and dismemberment; life insurance; disability plans; long term care insurance; workers compensation; tuition waivers and fee exemptions; vacation benefits (vacation benefits for non-tenure track faculty differ based on whether they have nine or ten month appointments or twelve month appointments) ; holidays; sick leave; leave without pay; family and medical leave; parental leave; jury duty leave; military leave; funeral/bereavement leave; **[*9]** unemployment leave; shared benefits; blood/blood platelet donor time; and leave under the Victims Economic Security and Safety Act. Brown and Schaffner testified that tenure system faculty and non-tenure track faculty are both expected to keep office hours.

V. Persky testified that the expected amount of office hours depends upon the course, rather than upon the faculty member's status as tenure system or non-tenure track. She explained that there may be longer office hours expected of a faculty member teaching an introductory course, but noted that that expectation would be the same for non-tenure track faculty as it would be for tenure system faculty.

Bauman testified that tenure system faculty are evaluated for promotion to tenure in the areas of teaching, research, and service. Bauman testified that the most important of these three areas is research. Both non-tenure track and tenure system faculty are evaluated annually by their department heads. Tenure system faculty member Barnum testified that the same evaluation form is used for evaluations of non-tenure track faculty and tenure system faculty in the College of Business Administration's Managerial Studies Department. Barnum **[*10]** is evaluated in the areas of teaching, research, and service. This year, non-tenure track faculty member Brown was evaluated based on the factors of teaching and service. In previous years, she was evaluated on teaching, research, and service. Brown explained that the difference depended upon the identities of the department head and dean, as well as changes made by the administration. Non-tenure track faculty member Gorman is evaluated on teaching, research and other grants, practice if applicable, and citizenship. Students use the same form to evaluate tenure system and non-tenure track faculty teaching courses. It is a common form across all colleges.

Non-tenure track faculty members have become tenure system faculty members when they are chosen through the search for that position. Schaffner and V. Persky testified as to specific examples. In addition, a tenure system faculty member may switch to a position as a non-tenure track faculty member. The University has a policy which addresses such switches. Bauman and Yudt testified that such switches rarely occur. Schaffner testified that tenure system professors often teach in non-tenure track positions after they retire.

III. [*11] POSITIONS OF THE PARTIES

The University argues that Section 7(a) of the Act does not permit a bargaining unit combining tenure system and non-tenure track faculty at the University's Chicago campus. The University also argues that it would not be appropriate to include tenure system and non-tenure track faculty in the same bargaining unit under a traditional Section 7(a) analysis. The University asserts that there is a significant conflict of interest between tenure system and non-tenure track faculty.

The Union argues that Section 7(a) of the Act does not prohibit the IELRB from placing non-tenure track, tenure track and tenured faculty at the University's Chicago campus in the same bargaining unit. The Union argues that tenure system and non-tenure track faculty share a community of interest. The Union disputes the University's argument that there is a conflict of interest between tenure system and non-tenure track faculty.

IV. DISCUSSION AND CONCLUSIONS OF LAW

A. Whether Section 7(a) of the Act prohibits the IELRB from certifying a bargaining unit that includes both tenure system and non-tenure track faculty at the University's Chicago campus .

The University **[*12]** argues that Section 7(a) of the Act does not permit a bargaining unit combining tenure system and non-tenure track faculty at the University's Chicago campus. We conclude that Section 7(a) of the Act does permit such a unit.

The language of Section 7(a) of the Act that is relevant to this issue provides:

> The sole appropriate bargaining unit for tenured and tenure-track academic faculty at each campus of the University of Illinois shall be a unit that is comprised of non-supervisory academic faculty employed more than half-time and that includes all tenured and tenure-track faculty of that University campus employed by the board of trustees in all of the campus's undergraduate, graduate, and professional schools and degree and non-degree programs (with the exception of the college of medicine, the college of pharmacy, the college of dentistry, the college of law, and the college of veterinary medicine, each of which shall have its own separate unit), regardless of current or historical representation rights or patterns or the application of any other factors. Any decision, rule, or regulation promulgated by the Board to the contrary shall be null and void.

The primary objective **[*13]** in construing the meaning of a statute is to ascertain and give effect to the intent of the legislature. *People v. Kinzer, 232 Ill.2d 179, 902 N.E.2d 667 (2009)*; *County of DuPage v. ILRB, 231 Ill.2d 593, 900 N.E.2d 1095 (2008)*; *Michigan Avenue National Bank v. County of Cook, 191 Ill.2d 493, 732 N.E.2d 528 (2000)*. The most reliable indicator of the legislature's intent is the language of the statute itself. *County of DuPage; In re Detention of Lieberman, 201 Ill.2d 300, 776 N.E.2d 218 (2002)*; *Michigan Avenue National Bank*. The statutory language is to be given its plain, ordinary and popularly understood meaning. *County of DuPage; In re Detention of Lieberman; People v. Ellis, 199 Ill.2d 28, 765 N.E.2d 991 (2002)*; *Michigan Avenue National Bank*. The IELRB may not depart from the plain language of a statute, in this case Section 7(a) of the Act, by reading into it exceptions, limitations or conditions that the legislature did not express. *Kinzer; Ellis*.

In Section 7(a) of the Act, the legislature stated that the appropriate unit would "include[] all tenure and tenure-track faculty of that **[*14]** University campus. ..." The legislature used the word "include", rather than an alternative term such as "consist of". The plain, ordinary and popularly understood meaning of "include" is to state that the items listed are part of a series, rather than that the series is limited to those items. To "include" means "to take in or comprise as part of a whole or group" or to "comprise or contain as part of a whole", *www.merriam-webster.com* (emphasis added); oxforddictionaries.com (emphasis added). The Merriam-Webster online dictionary states that "INCLUDE suggests the containment of something as a constituent, component, or subordinate part of a larger whole." The Oxford online dictionary states that "**including**" or "**includes**" implies that there is more than what is listed.

This interpretation is supported by Illinois case law. In *Zebulon Industries, Inc. v. County of DuPage, 146 Ill.App.3d 515, 496 N.E.2d 1256, 1259 (2nd Dist. 1986)*, the court stated that "[t]he term 'include' does not necessarily imply the exclusion of items not specifically enumerated. In fact, the weight of authority ordinarily interprets 'include' as a term of enlargement. **[*15]** " In *Paxson v. Board of Education, 276 Ill.App.3d 912, 658 N.E.2d 1309 (1st Dist. 1995)*, the court reached the same conclusion.

In addition, "[s]tatutes must be construed in the most beneficial way which their language will permit so as to prevent hardship or injustice, and to oppose prejudice to public interests," *In re Detention of Lieberman, supra, 776 N.E.2d at 224*. The legislature also stated

in Section 7 of the Act that the goal in determining bargaining units is to "ensure employees the fullest freedom in exercising the rights guaranteed by this Act". It would be contrary to this goal to construe Section 7(a) in a manner that prevents employees from being represented in a bargaining unit for which they have petitioned that is not prohibited by the language of Section 7(a).

The University argues that the legislative history of Section 7(a) of the Act supports its interpretation of the statutory language. Section 7(a) of the Act was amended effective January 1, 2004. The previous version of Section 7(a) provided:

> The sole appropriate bargaining unit for academic faculty at the University of Illinois shall be a unit that is comprised of **[*16]** non-supervisory academic faculty employed more than half time and that includes all tenured, tenure-track, and nontenure track faculty employed by the board of trustees of that University in all of its undergraduate, graduate, and professional schools and degree and non-degree programs, regardless of current or historical representation rights or patterns or the application of any another factors. Any decision, rule or regulation, promulgated by the Board to the contrary shall be null and void.

The University notes that, during the second reading of the bill that was ultimately adopted when Section 7(a) was amended effective January 1, 2004 as P.A. 93-445, Bill Sponsor Maloney stated that "[t]his amendment...limits bargaining units at each campus of the University of Illinois to just tenured and tenure-track faculty at each campus. " The University also notes that, shortly before a final vote was taken on the bill, Senator Maloney stated that the bill "gives the option to tenure and tenure-track faculty under the auspices of the University of Illinois - that is the campuses at Springfield, Urbana-Champaign and Chicago - the choice of whether or not they want to form a collective **[*17]** bargaining unit. "

However, where the language of a statute is clear and unambiguous, the plain and ordinary meaning of the language must be applied without resorting to other tools for interpreting statutes. *Quad Cities Open, Inc. v. City of Silvis, 208 Ill.2d 498, 804 N.E.2d 499 (2004)*; *see Kinzer, supra; Michigan Avenue National Bank, supra.* Where the language of a statute is certain and unambiguous, it is not interpreted by a sponsor's comments when introducing the legislation, nor by statements of the legislators who voted to pass the underlying bill, but by the language as written. *People v. Burdunice, 211 Ill.2d 264, 811 N.E.2d 678 (2004)*; *Chicago SMSA Limited Partnership v. Illinois Department of Revenue, 306 Ill.App.3d 977, 715 N.E.2d 719 (1999)*; *People v. James, 246 Ill.App.3d 939, 617 N.E.2d 115 (1st Dist. 1993)*. Here, there is no ambiguity about what "includes" means. Therefore, Section 7(a) must be interpreted at it is written, and not as prohibiting non-tenure track faculty from being including in bargaining units also including tenure system faculty.

The University also **[*18]** argues that there is a presumption that an amendment to a statute changes the law. However, P.A. 93-445 did change Section 7(a) in other ways. Before P.A. 93-445 was adopted, it was required that a bargaining unit containing tenured and tenure-track faculty at the University of Illinois also contain non-tenure track faculty. Now it is optional. In addition, before P.A. 93-445 was adopted, the bargaining unit for faculty at the University was required extend to all the campuses of the University. Now there are separate units for each campus. Faculty in the College of Medicine, the College of Pharmacy, the College of Dentistry, the College of Law and the College of Veterinary Medicine are now placed in separate units, as they were not previously. Accordingly, there is no inconsistency between an interpretation of Section 7(a) of the Act that allows for non-tenure track faculty to be placed in the same unit as tenure system faculty and the presumption that an amendment to a statute is presumed to change the law.

We conclude that Section 7(a) of the Act does not prohibit the IELRB from certifying a bargaining unit containing both non-tenure track and tenure system faculty. The petitioned-for **[*19]** bargaining unit is consistent with Section 7(a) of the Act.

B. Appropriateness of the Proposed Bargaining Unit

The University also argues that it would not be appropriate to include tenure system and non-tenure track faculty in the same bargaining unit under a traditional Section 7(a) analysis. The University asserts that there is a significant conflict of interest between tenure system and non-tenure track faculty.

The IELRB adopted rules setting forth presumptively appropriate bargaining units for employees employed by the University at *80 Ill. Adm. Code 1135.10*-1135.30. Section 1135.10 provides: "Presumptively appropriate means that a bargaining unit has been found to have the requisite community of interest under Section 7(a) of the...Act...unless the appropriateness is rebutted by contrary evidence." Section 1135.20(b)(1) of the Rules describes the following as a presumptively appropriate unit for collective bargaining:

> Unit 1: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured or tenure-track faculty; all full-time, nontenure-track faculty who possess a terminal **[*20]** degree appropriate to the academic unit in which the faculty member is employed; and all full-time, nontenure-track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms, but excluding all faculty members of the College of Pharmacy, the College of Medicine and the College of Dentistry.

This is the bargaining unit for which the Union has petitioned. Therefore, unless there is contrary evidence, the bargaining unit for which the Union has petitioned has been found to have the requisite community of interest under Section 7(a) of the Act. We determine that there is insufficient evidence in this case to rebut the presumption that the petitioned-for unit is appropriate.

Section 7 of the Act provides that, in determining a proposed bargaining unit is appropriate, the IELRB's decision should be:

> 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, **[*21]** and the desires of the employees.

Section 7 does not require that a proposed bargaining unit be the "most appropriate unit"; rather, it merely requires that a unit be "appropriate". *Black Hawk College Professional Technical Unit v. IELRB, 275 Ill.App.3d 189, 655 N.E.2d 1054 (1st Dist. 1995)*; *Sandburg Faculty Association v. IELRB, 248 Ill.App.3d 1028, 618 N.E.2d 989 (1st Dist. 1993)*.

The University argues that the proposed bargaining unit is inappropriate because there is a conflict of interest between tenure system and non-tenure track faculty. The University states that the role of non-tenure track faculty is to support tenure system faculty by conducting certain research and/or teaching certain classes. The University also states that tenure system faculty have the right to determine whether committees will include non-tenure track as well as tenure system faculty. The University asserts that tenure system and non-tenure track faculty will have different goals in bargaining.

However, the fact that non-tenure track faculty support tenure system faculty tends to establish functional integration between non-tenure track and tenure system faculty **[*22]** more than any conflict of interest between them. The University's argument that tenure system and non-tenure track faculty will have different goals in bargaining is purely speculative. The fact that tenure system faculty the right to determine whether committees will include non-tenure track as well as tenure system faculty is insufficient to establish a conflict of interest that would not allow for them to be placed in the same bargaining unit.

The University also notes its status as a research university. However, non-tenure track faculty are also involved in research. Therefore, the University's status as a research university is not a basis for not allowing non-tenure track and tenure system faculty to be placed in the same bargaining unit.

There are also various factors establishing a community of interest between tenure system and non-tenure track faculty. In terms of employee skills and functions, both tenure system and non-tenure track faculty teach and perform research. There is evidence of tenure system and non-tenure track faculty teaching the same courses. The requirements for teaching a course, including keeping office hours, are the same for tenure system and non-tenure **[*23]** track faculty.

As noted above, the fact that non-tenure track faculty support tenure system faculty by conducting certain research and/or teaching classes is an indication of functional integration. There is also evidence of functional integration in that tenure system faculty and non-tenure track faculty teach courses jointly and work together in obtaining grants.

The fact that non-tenure track faculty teach the same courses as tenure system faculty and substitute for tenure system faculty when tenure system faculty go on sabbatical, leave and break is evidence of interchangeablilty between tenure system and non-tenure track faculty. The fact that non-tenure track faculty members have become tenure system faculty members through searches for certain positions is also evidence of interchangeability. In addition, there is at least the possibility for tenure system faculty members to switch to positions as non-tenure track faculty members, and they often do so after they retire.

There is evidence of contact between tenure system and non-tenure track faculty in that their offices are intermingled. There is additional evidence of contact between the two groups in that tenure system **[*24]** faculty attend training with non-tenure track faculty and that both tenure system and non-tenure track faculty serve on some of the same committees. Contact occurs when tenure system and non-tenure track faculty teach courses jointly and work together in obtaining grants. The fact that non-tenure track research faculty might work for a tenure system faculty member is also evidence of contact.

Tenure system and non-tenure track faculty also have common supervision. Both groups are supervised and evaluated by their department heads. In addition, tenure system and non-tenure track faculty have most of the same benefits.

Like tenure system faculty, clinical and research non-tenure track faculty are required to have a terminal degree. While lecturer and instructor non-tenure track faculty are not required to have a terminal degree, Shuler and V. Persky each testified that non-tenure track faculty in their departments hold the same terminal degrees as tenure system faculty.

There are also differences between tenure system and non-tenure track faculty. The salary of non-tenure track faculty is generally lower than that of tenure system faculty. Tenure system faculty are eligible for sabbatical **[*25]** leaves of absence, while non-tenure track faculty generally are not. In addition, once tenure system faculty have achieved tenure, they have lifetime job security. Non-tenure track faculty, in contrast, work under contracts for a limited term and do not have guaranteed employment beyond the term of their contracts.

However, the factors that tenure system faculty and non-tenure track faculty have in common outweigh these differences. In *Black Hawk, supra*, and *Sandburg, supra*, the courts determined that tenure should not be given undue weight. We do not agree with the University that this factor has greater weight in a university setting than in a community college setting. In addition, some non-tenure track faculty members have been employed by the University for lengthy periods of time.

In addition, the court stated in *Black Hawk* that "[t]he desires of the employees is an important consideration because the goal in determining the appropriateness of a bargaining unit is to ensure employees the fullest freedom in exercising the rights guaranteed by the Act for the purpose of collective bargaining, " *275 Ill.App.3d at 198-99, 655 N.E.2d at 1060*. **[*26]** Therefore, as the court directed in *Black Hawk*, we "should focus on the similarities rather than the differences within the factors that are considered," *275 Ill.App.3d at 199, 655 N.E.2d at 1061*.

We conclude that the presumption that the proposed bargaining unit is appropriate has not been rebutted. In the alternative, we conclude that the proposed unit would be appropriate even if the IELRB's rules governing appropriate bargaining units were not considered.

V. CONCLUSIONS OF LAW

We conclude that Section 7(a) of the Act does not prohibit the IELRB from certifying a bargaining unit that includes both tenure system and non-tenure track faculty. We also conclude that the proposed bargaining unit is appropriate.

VI. CERTIFICATION

UIC United Faculty, AFT-IFT, AAUP is hereby certified as the exclusive representative of the following bargaining unit:

> **INCLUDED**: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured or tenure-track faculty; all full-time, nontenure-track faculty who possess a terminal degree appropriate to the academic unit in which the faculty member is employed; and all full-time **[*27]** nontenure-track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms.
>
> **EXCLUDED**: All faculty members of the College of Pharmacy, the College of Medicine and the College of Dentistry. All Supervisors, Managerial and Confidential Employees as defined in the "Act".

VII. RIGHT TO APPEAL

This is a final order of the Illinois Educational Labor Relations Board. Any person aggrieved by this Opinion and Order may apply for and obtain judicial review pursuant to the provisions of the Administrative Review Law, except that such review shall be afforded in the Appellate Court of a judicial district in which the IELRB maintains an office (Springfield or Chicago). *115 ILCS 5/7(d)*. Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of this Opinion and Order was served upon the party affected by this Opinion and Order. *115 ILCS 5/7(d)*. Â [1]

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[1] Â Â Member Ronald F. Ettinger recused and did not participate in the discussion or decision of this case.

Decided: September 15, 2011

Issued: September 15, 2011

Dissent By: Lynne O. Sered, Chairman

Dissent:

I respectfully **[*28]** disagree with my colleagues on the Board. Section 7(a) of the Illinois Educational Labor Relations Act is clear on its face that:

> The *sole* appropriate bargaining unit for tenured and tenure-track academic faculty at each campus of the University of Illinois *shall* be a unit...that includes all tenured and tenure-track faculty of that University campus. … Any decision, rule, or regulation promulgated by the Board to the contrary shall be null and void.

(Emphasis added).

Consequently, the Board's current Rule promulgated prior to the enactment of the January 1, 2004 amendment of Section 7(a) is null and void to the extent that it is inconsistent with the statutory language. Specifically, "nontenure track faculty" were deleted by the January 1, 2004 statutory amendment. However, two separate bargaining units would be appropriate at the University of Illinois-Chicago campus. I would remand to the Executive Director to certify a unit of "tenured and tenure-track" faculty" and another comprised of non-tenure track faculty subject to the Petitioner meeting the requirements of Section 1110.105(o), (p) and (r) of the IELRB's Rules, *80 Ill. Adm. Code 1110.105(o)*, (p) and **[*29]** (r). I would also have taken official notice of the fact that most public universities in Illinois do not place tenure system and non-tenure track faculty in the same bargaining unit. (See the collective bargaining agreements filed with the IELRB by Eastern Illinois University, Governors State University, Northeastern illinois University, Southern Illinois University at Carbondale and Western Illinois University.)

Assuming *arguendo* that the language of Section 7(a) is ambiguous, a bargaining unit combining tenure system and non-tenure track faculty at the University of Illinois-Chicago campus is still prohibited by Section 7(a). When a statute is ambiguous, other sources may be considered in determining the meaning of the statute, including the legislative history of the statute. *County of DuPage v. ILRB, 231 Ill.2d 593, 900 N.E.2d 1095 (2008)*; *Krohe v. City of Bloomington, 204 Ill.2d 392, 789 N.E.2d 1211 (2003)*. Here, the sponsor of the bill that ultimately was adopted in the January 1, 2004 amendment stated that [t]his amendment...limits bargaining units at each campus of the University of Illinois to just tenured and tenure-track faculty at each campus. " Accordingly, **[*30]** I respectfully dissent.

Illinois Educational Labor Relations Board

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STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Board of Trustees of the	)	
University of Illinois,	)	
	)	
Employer,	)	
	)	
and	)	Case No. 2011-RC-0011-C
	)	
UIC United Faculty, AFT-IFT, AAUP,	)	
	)	
Petitioner.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. BACKGROUND

On April 29, 2011,[1] the UIC United Faculty, AFT-IFT, AAUP (Union or Petitioner) filed a majority interest representation petition with the Illinois Educational Labor Relations Board (IELRB or Board) pursuant to Section 7(a) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. (IELRA or Act) seeking to represent the following unit of employees employed by the University of Illinois-Chicago (Employer):

> **INCLUDED:** All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured or tenure-track faculty; all full-time, nontenure-track faculty who possess a terminal degree appropriate to the academic unit in which the faculty member is employed; and all full-time nontenure-track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms.
>
> **EXCLUDED:** All faculty members of the College of Pharmacy, the College of Medicine and the College of Dentistry and all supervisors,

[1] All dates are presumed to have occurred in 2011, unless otherwise indicated.

managerial and confidential employees as defined in the Illinois Educational Labor Relations Act.

The petition was accompanied by the required showing of interest. There is no allegation of fraud or coercion with respect to the showing of interest.

The Employer filed a Motion to Dismiss the instant petition as inappropriate.[2] On May 24, the Board's Executive Director issued an Order denying the Employer's Motion to Dismiss and transferring this matter to the undersigned Administrative Law Judge for a hearing. A hearing in this matter was conducted on June 1 and 2. At the hearing, both parties were represented by counsel. Both parties had the opportunity to call, examine, and cross-examine witnesses, introduce documentary evidence and present arguments. Both parties filed post-hearing briefs.

II. ISSUES AND CONTENTIONS

The issues in this matter are (1) whether Section 7(a) of the Act prohibits the Board from certifying a bargaining unit that includes tenured and tenure-track faculty (TS faculty) and non-tenure track faculty (NTT faculty); and (2) whether TS faculty share a sufficient community of interest with NTT faculty so as to justify a their co-existence in the bargaining unit as petitioned-for.

The Employer argues that the representation is inappropriate because Section 7(a) of the Act provides that the sole appropriate bargaining unit for tenured and tenure-track employees at the University's Chicago campus is a unit comprised of tenured and tenure-track faculty only. The Employer contends that since the Board is statutorily prohibited from certifying the petitioned-for unit of TS and NTT faculty, the Union's petition must be dismissed. The Employer asserts that even assuming *arguendo* that Section 7(a) of the

[2] The grounds for the Motion to Dismiss are addressed herein in Section IV.A.

Act does not preclude a mixed TS and NTT faculty bargaining unit, the Board should still dismiss the petition based on traditional community of interest factors, where the significant disparity in interests between TS and NTT faculty justify the establishment of two separate and distinct bargaining units.

The Union contends that the history of Section 7(a) of the Act indicates that the legislature never intended to force the separation of TS faculty from NTT faculty and that the language of the Act in its current form permits the proposed unit. The Union further argues that the community of interest factors establish that one faculty unit is clearly warranted in the instant matter.

III. FINDINGS OF FACT

During the hearing, three witnesses testified on behalf of the University: University Interim Vice-Chancellor for Academic Affairs and Provost Jerry Bauman (Bauman); University Director for Faculty Affairs, HR in the Office of the Vice Provost for Faculty Affairs Angela Yudt (Yudt); and University Vice-Provost for Faculty Affairs Mo-Yin Tam (Tam). Seven witnesses testified on behalf of the Union: University NTT faculty members Mary R. Brown (Brown) and Geraldine Gorman (Gorman); and University TS faculty members Darold Barnum (Barnum), John Shuler (Shuler), Laurie Schaffner (Schaffner), Victoria Persky (V. Persky), and Joseph Persky (J. Persky). The following findings of fact are based on the parties' stipulations, testimony and documentary evidence in the record:

The University is an educational Employer within the meaning of Section 2(a) of the Act. The Union is a labor organization within the meaning of Section 2(c) of the Act. By the instant petition, the Union seeks to represent a bargaining unit consisting of

faculty members at the Employer's Chicago campus. The petitioned-for bargaining unit members work in a variety of the Employer's colleges and departments within those colleges. The petition excludes faculty members in the Colleges of Medicine, Dentistry, and Pharmacy.

Generally, tenure-track faculty must complete a six-year probationary period prior to achieving tenured status. Bauman testified that attaining tenured status means lifetime job security; that once tenure is awarded to a TS faculty member, the Employer has essentially made a lifetime commitment to that employee; and that a tenured TS faculty member's contract will be repetitively renewed.

The various types of NTT faculty appointments include clinical faculty, research faculty, lecturers and instructors, and visiting and adjunct faculty. Although not eligible for tenure, clinical and research NTT faculty are eligible for promotion within their respective tracks. Ranks held by clinical NTT faculty are instructor, assistant professor, associate professor, and professor. Ranks held by research NTT faculty are assistant professor, associate professor, and professor. Some NTT faculty work under annual contracts, whereas other NTT faculty have multi-year contracts. Contracts are not automatically renewed and NTT faculty do not have guaranteed employment beyond the term of their particular contract. Bauman testified that compared to tenured TS faculty, NTT faculty have very little job security. NTT faculty member Brown has been employed by the University for 17 years and NTT faculty member Gorman has been employed by the University for nine years.

TS faculty are required to have a terminal degree. That is, the highest degree achievable in a given field. Clinical and research NTT faculty are required to have a

terminal degree. Lecturer and instructor NTT faculty are not required to have a terminal degree. Shuler and V. Persky each testified that NTT faculty in their departments hold the same terminal degree as TS faculty.

Teaching responsibilities for NTT and TS faculty are the same in the College of the University Library. In the College of Business Administration, NTT faculty teach undergraduate and graduate courses also taught by TS faculty. The level of supervision is the same for NTT faculty as it is for TS faculty teaching courses in the College of Business Administration. NTT faculty member Brown currently teaches a Finance 300 class in the College of Business Administration's Department of Finance. TS faculty teach other sections of that course. Brown teaches undergraduate and graduate level courses. NTT faculty teach the same courses as TS faculty in the School of Public Health's Division of Epidemiology. The responsibilities for teaching a particular course in the School of Public Health's Division of Epidemiology are the same for TS as they are for NTT faculty. NTT faculty and TS faculty teach the same courses in the College of Liberal Arts' Department of Economics, including upper-level graduate courses. NTT faculty teach the same courses as TS faculty in the College of Nursing. This includes graduate level courses, undergraduate courses, and graduate entry level program courses. When NTT faculty are teaching the same course as TS faculty in the College of Nursing, the requirements are not any different. Barnum, Brown, and V. Persky each testified and gave examples of NTT faculty teaching courses taught by TS faculty when TS faculty go on sabbatical, leave, and break. TS faculty members may be granted sabbatical leaves of absence, whereas NTT faculty are generally not entitled to apply for and take sabbatical leave.

The offices of TS and NTT faculty in the College of Business Administration's Departments of Managerial Studies and Finance, the School of Public Health's Division of Epidemiology, and College of Nursing are intermingled. TS faculty in the College of Business Administration's Department of Managerial Studies attend trainings with NTT faculty. TS faculty and NTT faculty in the College of Nursing and the College of the University Library teach courses jointly. Bauman, Barnum, Shuler, V. Persky, Schaffner, and Gorman all testified that TS faculty and NTT faculty work together in obtaining grants. TS and NTT faculty sit on committees comprised of TS and NTT faculty with equal voting rights. Both TS and NTT serve as committee chairs and co-chairs.

TS faculty and NTT faculty are supervised by their department heads. Generally, salary for NTT faculty is lower than salary for TS faculty. Brown and Schaffner testified that TS faculty and NTT are expected to keep office hours. V. Persky testified that the expected amount of office hours depends upon the course, rather than upon the teacher's status as TS or NTT. She explained that there may be longer office hours expected of a faculty member teaching an introductory course, but noted that that expectation would be the same for NTT faculty as it would be for TS faculty.

Bauman testified that TS faculty are evaluated for promotion to tenure in the areas of teaching, research, and service. Both NTT and TS faculty are evaluated annually by their department heads. TS faculty member Barnum testified that the same evaluation form is used for evaluations of NTT faculty and TS faculty in the College of Business Administration's Managerial Studies Department. Barnum is evaluated in the areas of teaching, research, and service. This year, NTT faculty member Brown was evaluated upon factors of teaching and service. In previous years, she was evaluated on teaching,

research, and service. Brown explained that the difference depended upon the identities of the department head and dean, as well as changes made by the administration. NTT faculty member Gorman is evaluated on teaching, research and other grants, practice if applicable, and citizenship. Students use the same form to evaluate TS and NTT faculty teaching courses, it is a common form across all colleges.

IV. DISCUSSION AND CONCLUSIONS OF LAW

A. Whether Section 7(a) of the Act prohibits the Board from certifying a bargaining unit that includes TS faculty and NTT faculty.

The Employer argues that the last paragraph of Section 7(a) of the Act provides that the sole appropriate bargaining unit for TS faculty is a bargaining unit limited only to TS faculty. The Employer contends that Section 7(a) does not permit for the inclusion of other positions, such as NTT faculty, in a bargaining unit of TS faculty. The language of Section 7(a) of the Act that is relevant to this issue provides:

> The sole appropriate bargaining unit for tenured and tenure-track academic faculty at each campus of the University of Illinois shall be a unit that is comprised of non-supervisory academic faculty employed more than half-time and that includes all tenured and tenure-track faculty of that University campus employed by the board of trustees in all of the campus's undergraduate, graduate, and professional schools and degree and non-degree programs (with the exception of the college of medicine, the college of pharmacy, the college of dentistry, the college of law, and the college of veterinary medicine, each of which shall have its own separate unit), regardless of current or historical representation rights or patterns or the application of any other factors. Any decision, rule, or regulation promulgated by the Board to the contrary shall be null and void.

Section 7(a) of the Act was amended effective January 1, 2004. The previous version of Section 7(a) provided: "The sole appropriate bargaining unit for academic faculty at the University of Illinois shall be a unit that is comprised of non-supervisory academic faculty employed more than half-time and that includes all tenured, tenure-

track, and **nontenure-track faculty** employed by the board of trustees of that University … .” (emphasis added) IL LEGIS 93-445 (2003).

The primary rule in statutory construction is to ascertain and give effect to the language and intent of the legislature. County of Cook v. Illinois Labor Relations Board, 347 Ill. App. 3d 538, 807 N.E.2d 613 (2004); Kavanaugh v. County of Will, 293 Ill. App. 3d 880, 689 N.E.2d 299 (1997); People v. Hicks, 164 Ill. 2d 218, 647 N.E.2d 257 (1995). The language of a statute, given its plain and ordinary meaning, is the best indication of legislative intent. Paris v. Feder, 179 Ill. 2d 173, 177, 688 N.E.2d 137 (1997); Eagan v. Chicago Transit Authority, 58 Ill. 2d 527, 531, 634 N.E.2d 1093 (1994). A court, or in this matter a labor board, must not depart from the statute’s plain language by reading into it exceptions, limitations, or conditions the legislature did not express. People v. Ellis, 199 Ill. 2d 28, 39, 765 N.E.2d 991 (2002); People ex rel. Madigan v. Kinzer, 232 Ill. 2d 179, 184-85, 902 N.E.2d 667 (2009).

The Employer contends that if the General Assembly truly intended to permit the inclusion of NTT faculty, the logical way to do it would have been to retain the reference to nontenure-track faculty, as was previously found in Section 7(a) of the Act. On the other hand, if the legislature intended to exclude NTT faculty from a bargaining unit of TS faculty, the legislature would have included express language doing so. Moreover, the plain language of Section 7(a) demonstrates there is no such restriction prohibiting a bargaining unit that includes TS faculty and NTT faculty. The presumption is that the legislature, by not including language expressly stating that NTT faculty could not be included in a bargaining unit of TS faculty, did not intend to prohibit the Board from certifying a bargaining unit that includes both TS faculty and NTT faculty.

The Board adopted rules setting forth presumptively appropriate bargaining units for employees employed by the University in 80 Ill. Adm. Code 1135.10-1135.30, 80 Ill. Adm. Code 1100.00 et seq. (Rules). Section 1135.20(b)(1) of the Rules describes the following as a presumptively appropriate unit for collective bargaining:

> Unit 1: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured or tenure-track faculty; all full-time, nontenure-track faculty who possess a terminal degree appropriate to the academic unit in which the faculty member is employed; and all full-time, nontenure-track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms, but excluding all faculty members of the College of Pharmacy, the College of Medicine and the College of Dentistry.

Administrative rules interpreting a statute are given substantial deference as an informed source of guidance as to legislative intent. Illinois RSA No. 3, Inc. v. Dept. of Central Management Services, 348 Ill. App. 3d 72, 809 N.E.2d 137 (1st Dist. 2004); National Pride of Chicago, Inc. v. City of Chicago, 206 Ill.App.3d 1090, 1101, 562 N.E.2d 563, 570 (1990). The unit described in Section 1135.20(b)(1) of the Rules is the petitioned-for unit in this matter. The guidance provided by the Rules as to the legislative intent of Section 7(a) of the Act indicates that the legislature did not intend to prohibit the NTT faculty from being included in a bargaining unit with TS faculty.

Based on the plain language of Section 7(a) of the Act and upon Section 1135.20(b)(1) of the Rules, I find that Section 7(a) of the Act does not prohibit the Board from certifying a bargaining unit that includes TS and NTT faculty.

B. Community of Interest Factors

The Employer asserts that even assuming *arguendo* that Section 7(a) of the Act does not preclude a mixed TS and NTT faculty bargaining unit, the Board should still dismiss the petition based on traditional community of interest factors, where the

significant disparity in interests between TS and NTT faculty justify the establishment of two separate and distinct bargaining units.

As discussed above, Section 1135.10-1135.30 of the Rules sets forth presumptively appropriate bargaining units for educational employees employed by the University. Section 1135.10 provides: "Presumptively appropriate means that a bargaining unit has been found to have the requisite community of interest under Section 7(a)" of the IELRA. The petitioned-for unit is listed in Section 1135.20(b)(1) of the Rules and thus, is presumptively appropriate and has a requisite community of interest under Section 7(a) of the Act. That being true, I will continue my analysis and address the Employer's alternate argument that the petition should be dismissed based upon the community of interest factors.

In determining whether a bargaining unit is appropriate, the Board is guided by the language contained in Section 7(a) of the Act, which provides, in relevant part: "the Board shall decide in each case, in order to ensure employees the fullest freedom in exercising the rights guaranteed by this Act." The Board has recognized that more than one appropriate bargaining unit may cover the same employees. Edwardsville Community Unit School Dist. No. 7, 8 PERI 1003, Case Nos. 91-RC-0022-S, 91-RC-0023-S (IELRB Opinion and Order, November 21, 1991). The Board has rejected any requirement of maximum coherence or selection of a most appropriate unit if more than one potential configuration would be appropriate. Id. The Act does not require that a petitioned-for unit be the most appropriate unit, but rather an appropriate unit. Black Hawk College Professional Technical Unit v. IELRB, 275 Ill. App. 3d 189, 655 N.E.2d 1054 (1st Dist. 1995); University of Illinois, 7 PERI 1103, Case No. 90-RS-0017-S

(IELRB Opinion and Order, September 13, 1991), rev'd on other grounds, 235 Ill. App. 3d 709, 600 N.E.2d 1292 (4th Dist. 1992). To refuse to find a bargaining unit appropriate because of the possible existence of a more appropriate alternative unit would not serve the statutory purpose of ensuring employees the fullest freedom in exercising the rights guaranteed them by the Act. Board of Trustees of the University of Illinois, 21 PERI 119, Case No. 2005-RC-0007-S (IELRB Opinion and Order, July 14, 2005). Thus, the question is not whether there is a more appropriate bargaining unit for the placement of the petitioned-for TS faculty and NTT faculty, but rather, whether the petitioned-for bargaining unit composed of TS faculty and NTT faculty is an appropriate bargaining unit.

Pursuant to Section 7(a) of the Act, the specific community of interest factors the Board should consider in resolving unit determinations include: employee skills and functions, degree of functional integration, interchangeability and contact among employees, common supervisor, wages, hours and other working conditions of the employees involved, and the desires of the employees.

The educational backgrounds of the TS faculty and the NTT faculty are similar and in some instances, the same. TS faculty are required to have a terminal degree, as are clinical and research NTT faculty. NTT and TS faculty members in the College of the University Library and School of Public Health's Division of Epidemiology hold terminal degrees. TS faculty and NTT faculty teach the same courses. TS faculty and NTT faculty teach undergraduate and graduate courses. Regardless of whether a course is being taught by a TS faculty member or a NTT faculty member, the responsibilities of the faculty member teaching the course are the same. Both TS and NTT faculty are

expected to keep office hours. Accordingly, I find that the general skills and functions of the TS and NTT faculty are similar. The skills and functions of the TS faculty and the NTT faculty are similar, and, thus, are functionally integrated. Chicago Board of Education, 18 PERI 1158, Case No. 2002-RS-0008-C (IELRB Opinion and Order, October 17, 2002).

There is evidence of interchangeability between the TS faculty and the NTT faculty. NTT faculty support TS faculty by teaching their courses while TS faculty are on sabbatical, leave, and break. As discussed above, NTT faculty teach the same courses as TS faculty.

The record demonstrates a high degree of contact between the TS faculty and NTT faculty. TS and NTT faculty offices are intermingled. Cf. Chicago Board of Education, 18 PERI 1158 (use of lockers in the same area as a factor supporting a finding of a community of interest) (citing Home Brewing Co. Inc., 124 NLRB 930 (1959) (use of common locker room as a factor supporting a finding of a community of interest)). TS and NTT faculty sometimes teach courses jointly. TS and NTT faculty serve side-by-side on committees. Black Hawk College, 275 Ill. App. 3d 189, 655 N.E.2d 1054. TS and NTT faculty work together in attaining grants. TS faculty and NTT faculty have the same supervisors, as they are both supervised by their department head.

TS and NTT faculty are evaluated upon similar, and sometimes the same, factors. TS faculty are evaluated based on teaching, research, and service. NTT faculty member Brown testified that while this year she had been evaluated based on teaching and service, in previous years she had been evaluated based on teaching, research, and service. Brown explained that the difference was due to the department head and dean.

She did not indicate whether there were changes to the evaluation factors of the TS faculty in her department. NTT faculty member Gorman is evaluated based upon the factors of teaching, research and other grants, practice if applicable, and citizenship.

Membership on committees is often a mix of TS and NTT faculty members who enjoy the same voting rights. TS and NTT faculty members serve as committee chairs and co-chairs.

There are some differences between TS faculty and NTT faculty. Namely, TS faculty can obtain tenure while NTT cannot. The IELRB has recognized that while tenure eligibility is an important factor to be weighed, it is not controlling. Elgin Community College District 509, 9 PERI 1079, Case No. 92-RS-0003-C (IELRB Opinion and Order, April 23, 1993), aff'd, 277 Ill. App. 3d 114, 660 N.E.2d 265 (1st Dist. 1996). The IELRB has also recognized that "[i]f we were automatically to exclude one group of faculty from a proposed bargaining unit because of their ineligibility for tenure, we would in effect be creating a per se rule. This we decline to do." Id. In Sandburg Faculty Ass'n, IEA-NEA v. IELRB, 248 Ill. App. 3d 1028, 618 N.E.2d 989 (1st Dist. 1993), the court reversed the IELRB's determination that a proposed bargaining unit of faculty members and non-faculty members was inappropriate, finding that the IELRB improperly focused upon tenure, rather than on the specific factors set forth in Section 7(a) of the Act in determining that the proposed bargaining unit was inappropriate.[3] The court noted that historically, tenure has not been a decisive factor in

[3] The court also found that the IELRB improperly relied upon the participation of faculty in the employer's decision-making process and the faculty's access to and participation in determining tenure for other faculty. Sandburg, 248 Ill. App. 3d 1034-1035, 618 N.E.2d 994-995. See also Blackhawk College, 275 Ill. App. 3d 189, 655 N.E.2d 1054 (court found that the IELRB improperly placed undue emphasis on participation in collegial governance and faculty participation in the tenure process to reach its decision that petitioned-for bargaining unit of tenured/tenure eligible employees and employees not eligible for tenure was not an appropriate unit).

a proper community of interest analysis and recognized that the IELRB has approved bargaining units where both tenured/tenure eligible employees and employees not eligible for tenure were members. Id. at 1038-1039, 618 N.E.2d at 996-997 (citing Danville Community Consolidated School District 118, 5 PERI 1084, Case No. 87-RS-0001-S (IELRB Opinion and Order, April 12, 1989) (teachers and aides in same bargaining unit)). Likewise, I do not find that this difference renders the petitioned-for unit inappropriate.

Additionally, eligibility for formal sabbatical leave and salary differ. I note that NTT faculty work under annual or multi-year contracts that are not automatically renewed upon their expiration. In contrast, once a TS faculty member has achieved tenure, his or her contract will be repetitively renewed. Despite this, I find that there is evidence in the record that the NTT faculty have a reasonable assurance of future employment. The reason for this is that even though NTT faculty do not have tenure rights, the NTT faculty members who testified at the hearing had been employed by the University for nine years and 17 years. Elgin Community College District 509, 9 PERI 1079; see also Chicago Board of Education, 18 PERI 1158 (fact that employees sought to be added to the existing unit were not assured that they would be working the following school year and had to reapply each year did not render their inclusion in a unit of employees who did not have to do so inappropriate). In sum, I find that the differences between the TS and NTT faculty are outweighed by their similarities, which include skills and functions, functional integration, interchangeability, contact, common supervision, similar evaluations, and a shared role in faculty governance. An analysis of

the statutory factors demonstrates that there is a strong community of interest between the TS faculty and the NTT faculty.

Finally, the desires of the employees are an important consideration because the goal in determining the appropriateness of a bargaining unit is to ensure employees the fullest freedom in exercising the rights guaranteed them by the Act for the purpose of collective bargaining. 115 ILCS 5/7(a); Black Hawk College, 275 Ill. App. 3d 189, 655 N.E.2d 1054. In this case, the majority interest petition in this matter is accompanied by the required showing of interest from a majority of the petitioned-for unit. Thus, the desire of a majority of the NTT and TS faculty members is to be represented in a unit that contains both NTT and TS faculty members.

For the reasons discussed above, I find that the TS and NTT faculty share a sufficient community of interest pursuant to Section 7(a) of the Act to constitute an appropriate bargaining unit.

V. CONCLUSIONS OF LAW

Section 7(a) of the Act does not prohibit the Board from certifying a bargaining unit that includes both TS faculty and NTT faculty. TS faculty and NTT faculty share a sufficient community of interest pursuant to Section 7(a) of the Act to constitute an appropriate bargaining unit.

VI. RECOMMENDED ORDER DIRECTING CERTIFICATION

I recommend that the Union be certified as the exclusive representative of the following bargaining unit:

> **INCLUDED:** All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured or tenure-track faculty; all full-time, nontenure-track faculty who possess a terminal degree appropriate to the academic unit in which the faculty member is employed; and all full-

time nontenure-track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms.

EXCLUDED: All faculty members of the College of Pharmacy, the College of Medicine and the College of Dentistry and all supervisors, managerial and confidential employees as defined in the Illinois Educational Labor Relations Act.

VII. EXCEPTIONS

Pursuant to Section 1110.105(k)(2) of the Board's Rules, the parties may file written exceptions to this Recommended Decision and Order and briefs in support of those exceptions no later than seven (7) days after receipt of this decision. Exceptions and briefs must be filed with the Board's General Counsel. If no exceptions have been filed within the seven day period, the parties will be deemed to have waived their exceptions. Under Section 1100.20 of the Board's Rules, 80 Ill. Adm. Code 1100.20, parties must send a copy of any exceptions they choose to file to the other parties and must provide the Board with a certificate of service. A certificate of service is "a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service," 80 Ill. Adm. Code 1100.20(e). If a party fails to send a copy of its exceptions to the other parties or fails to include a certificate of service, that party's appeal rights with the Board will end.

Dated: **July 12, 2011**
Issued: Chicago, Illinois

Ellen Maureen Strizak
Administrative Law Judge

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