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March 23, 2018

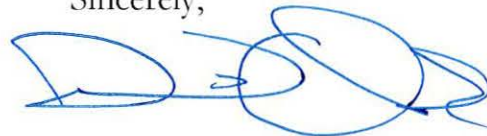
Larry D. Cheskawich, Secretary
Pennsylvania Labor Relations Board
651 Boas Street, Room 418
Harrisburg, PA 17121-0750

RE: *Motion to Intervene or Participate and Advance Request for Review and Stay*
Case No. PERA-R-17-40-E

Dear Mr. Cheskawich:

Please find enclosed for filing an original and three copies of *Graduate Assistant Michael Cronin's Motion to Intervene or Participate and Advance Request for Review and Stay* in the above-referenced matter. You are welcome to contact me with any questions at 717-421-8155.

Sincerely,



David R. Osborne

cc: Joseph F. Canamucio, Esq.
Shannon D. Farmer, Esq.
Meredith C. Swartz, Esq.
Stephen A. Helmerich, Esq., Hearing Examiner

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD**

IN THE MATTER OF THE
EMPLOYEES OF
THE PENNSYLVANIA STATE
UNIVERSITY

Case No. PERA-R-17-40-E

**GRADUATE ASSISTANT MICHAEL CRONIN’S MOTION TO
INTERVENE OR PARTICIPATE AND ADVANCE REQUEST
FOR REVIEW AND STAY**

Pursuant to section 35.28(a) of the General Rules of Administrative Practice and Procedure (“GRAPP”) and sections 95.44 and 95.91(k) of the Rules and Regulations of the Pennsylvania Labor Relations Board (“Board”), graduate assistant Michael Cronin (“Mr. Cronin”) respectfully moves to intervene or participate in the above-referenced matter. Mr. Cronin also requests, in advance of the Board Representative’s forthcoming determinations in this matter, that the Board review and stay the proceedings pending the Board’s determination as to, *inter alia*, whether graduate assistants of the Pennsylvania State University (“Penn State”) are “public employes” for purposes of the Public Employee Relations Act (“PERA”):

I. BACKGROUND

1. Mr. Cronin is a doctoral student of Energy and Mineral Engineering at Penn State, where he is working with two faculty advisors on his dissertation until his anticipated graduation in 2020. Mr. Cronin is also furthering his education by serving

as a graduate assistant. He has both teaching and research assignments. An affidavit signed by Mr. Cronin is attached hereto as “Exhibit A” and incorporated herein by reference.

2. On February 6, 2018, Hearing Examiner Stephen A. Helmerich (“Hearing Examiner”) issued a proposed decision and order entitled “Order Directing Submission of Eligibility List” (“Proposed Order”) in this matter. A true and correct copy of the Proposed Order is attached hereto as “Exhibit B” and incorporated herein by reference.

3. In the Proposed Order, the Hearing Examiner concluded, *inter alia*, that
- a. certain graduate students are “public employes” for purposes of section 301(2) of PERA and specified a bargaining unit of such students, Proposed Order 22, 30;
 - b. the “Coalition of Graduate Employees, PSEA/NEA” (“Coalition”) is an “employe organization” for purposes of section 301(3) of PERA, *id.* at 29; and
 - c. the Board had jurisdiction over the parties, *id.* at 29.

4. The Hearing Examiner’s Proposed Order was inconsistent with longstanding Pennsylvania Supreme Court precedent, *Philadelphia Ass’n of Interns & Residents v. Albert Einstein Medical Center, Temple University*, 369 A.2d 711 (Pa. 1977) (“*PAIR*”), concerning individuals who are paid to perform work primarily for educational or training purposes.

5. As set forth in the Proposed Order, the Hearing Examiner relied on a Board decision that purports to be distinguishable from the Pennsylvania Supreme Court's *PAIR* decision, then explained: "As a Hearing Examiner of the Board it is my duty to apply Board decisions and i[s] not my duty to overrule Board authority. Thus [Penn State's] arguments on these grounds are more properly addressed to the Board." Proposed Order 25.

6. On February 25, 2018, Mr. Cronin received an email from Penn State notifying him that he was within the bargaining unit and therefore eligible to vote in the representation election. A true and correct copy of the email sent to Mr. Cronin is attached hereto as "Exhibit C" and incorporated by reference.

7. On or about March 8, 2018, Mr. Cronin became aware that Penn State had tentatively agreed with the Coalition to hold a representation election on the following dates: April 10, 11, 12, 13, 16, and 17.

8. The Board did not exercise *sua sponte* review of the Proposed Order pursuant to 95.98(g) of the Board's Rules and Regulations, despite the gravity and novelty of the legal issues raised by this matter.

9. As of the date of this filing, there has been no Board Representative decision or order "adopt[ing], reject[ing], or modify[ing]" the Hearing Examiner's Proposed Order and "set[ting] forth the findings of fact, conclusions of law, discussion and order or direction" as required by section 95.91(k)(2)(ii) of the Board's Rules and Regulations.

10. Mr. Cronin moves to intervene in this matter pursuant to section 35.28(a) of GRAPP and section 95.44(a) of the Board's Rules and Regulations or, alternatively, to participate as a party within formal intervention pursuant to section 95.44(b) of the same.

11. Mr. Cronin does not seek to introduce new facts into the record, which appears to be closed and awaiting the Board Representative's decision or order "adopt[ing], reject[ing], or modify[ing]" of the Hearing Examiner's Proposed Order as required by section 95.91(k)(2)(ii) of the Board's Rules and Regulations, at this time.

12. Irrespective of the Board's determination as to Mr. Cronin's intervention or participation, this Board should review and stay this matter pursuant to section 95.91(k)(2)(iii) of the Board's Rules and Regulations following the Board Representative's expected decision or order "adopt[ing], reject[ing], or modify[ing]" of the Hearing Examiner's Proposed Order. 34 Pa. Code § 95.91(k)(2)(ii).

13. Accordingly, following issuance of the Board Representative's expected decision or order, Mr. Cronin intends to file a self-contained Request for Review pursuant to section 95.91(k)(2)(iii) of the Board's Rules and Regulations and requests that he be notified as to issuance of such decision or order.

II. MR. CRONIN'S RIGHT TO INTERVENE IS CLEAR

14. Section 35.28(a) of GRAPP states "[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under

which the proceeding is brought.” 1 Pa. Code § 35.28(a); the Board’s Rules and Regulations provide that “[m]otions to intervene shall be in writing, shall specify the grounds for intervention, shall be signed and verified, and a copy shall be served upon the parties to the proceeding and proof thereof filed with the Board.” 34 Pa. Code § 93.16(a).

15. Section 35.28(a) further states that the right or interest “may be one of the following”:

- (1) A right conferred by statute of the United States or of this Commonwealth.
- (2) An interest which may be directly affected and which is not adequately represented by existing parties, and as to which petitioners may be bound by the action of the agency in the proceeding. *The following may have an interest: consumers, customers or other patrons served by the applicant or respondent; holders of securities of the applicant or respondent; employes of the applicant or respondent; competitors of the applicant or respondent.*
- (3) Other interest of such nature that participation of the petitioner may be in the public interest.

1 Pa. Code § 35.28(a) (emphases added).

A. MR. CRONIN’S INTEREST

16. Pursuant to section 35.28(a)(2) of GRAPP, Mr. Cronin has “[a]n interest which may be directly affected and which is not adequately represented by existing parties, and as to which [he] may be bound by the action of the agency in the proceeding.”

17. Specifically, Mr. Cronin is a graduate assistant at Penn State, and he has been notified of his inclusion within the bargaining unit as determined by the Proposed Order. Exs. A, C.

18. The Proposed Order deems Mr. Cronin a “public employe” for purposes of PERA, subjecting him to this election and/or possible subsequent representative elections. Proposed Order 22, 30.

19. Mr. Cronin will be bound by the Board’s determination as to whether he is a “public employe” for purposes of PERA, to its determination as to the bargaining unit, and to its certification of the election, if any.

20. Should the Coalition or some other putative “employe organization” win a representative election, Mr. Cronin and his bargaining unit will be subject to and restricted by exclusive representation.

21. Mr. Cronin does not want or need exclusive representation by the Coalition or any other putative “employe organization.”

22. Instead, Mr. Cronin values and desires an unmediated relationship with Penn State and the power to negotiate his own terms and conditions of his appointment as a graduate assistant.

23. Indeed, the Proposed Order violates Mr. Cronin’s associational rights under the First and Fourteenth Amendments to the United States Constitution. *See Mulhall v. UNITE HERE Local 355*, 618 F.3d 1279, 1287 (11th Cir. 2010) (“[R]egardless of whether Mulhall can avoid contributing financial support to or

becoming a member of the union . . . its status as his exclusive representative plainly affects his associational rights.”); *cf. Hill v. Serv. Emps. In’tl Union*, 850 F.3d 861 (7th Cir. 2017); *D’Agostino v. Baker*, 812 F.3d 240 (1st Cir. 2016).

24. The parties to this matter have not requested the Board’s review or a stay in this matter.

25. In fact, Penn State has tentatively agreed with the Coalition as to dates on which to hold a representation election.

26. No other graduate assistants or trainees have intervened in this matter.

B. THE PUBLIC’S INTEREST

27. Additionally, pursuant to section 35.28(a)(3) of GRAPP, Mr. Cronin’s “participation . . . may be in the public interest.”

28. Penn State is a large public university system with nearly 100,000 enrolled students. Pa. State Univ., Penn State Releases Annual Enrollment Snapshot, Sees Small Enrollment Decrease, PENN STATE NEWS (Nov. 6, 2017), <http://news.psu.edu/story/492568/2017/11/06/academics/penn-state-releases-annual-enrollment-snapshot-sees-small>. According to the Order, Penn State “has approximately 13,000 – 14,000 graduate students in its various programs” and “approximately 4,000 Ph.D. students.” Proposed Order 2, at ¶ 4.

29. Penn State “awards approximately 4,000 graduate assistantships each year to degree-seeking graduate students.” Proposed Order 2, at ¶ 7.

30. Such graduate assistants “are often assigned to be teaching assistants or research assistants.” *Id.*

31. As a graduate assistant with both teaching and research assignments, Mr. Cronin would represent the interests of graduate assistants as well as graduate and Penn State students generally.

32. The public has an interest in whether individuals paid using public funds are subject to collective bargaining.

33. Longstanding Pennsylvania Supreme Court precedent, *PAIR*, makes clear that graduate assistants are not “public employes” for purposes of PERA, and the public has an interest in ensuring that the Board recognizes and follows such precedent. *PAIR*, 369 A.2d at 714 (“In our opinion, while appellants herein are clothed with the indicia of employee status, the true nature of their reason for being at Temple University negates their employee status.”).

34. Moreover, the spirit of PERA would not be served by forcing collective bargaining on graduate assistants. *See PAIR*, 369 A.2d at 715 (“[T]he spirit of [PERA] would not be served by allowing appellants to form a bargaining unit. Appellants do not comprise a group of persons who are attempting to establish a continuous relationship with appellee, but rather, after they have fulfilled their educational requirement in either one, two or three years, leave appellee-hospital for new areas of endeavor.”).

III. ALTERNATIVELY, MR. CRONIN SHOULD BE PERMITTED TO PARTICIPATE PURSUANT TO SECTION 95.44(b)

35. Alternatively, if Mr. Cronin is not permitted to intervene in this matter, he should nevertheless be permitted to participate as a party for the same reasons advanced above and as follows.

36. Section 95.44(b) of the Board's Rules and Regulations provide that, "[i]n representation proceedings, the hearing examiner may . . . permit . . . public employes¹¹ . . . to participate as parties without formal intervention, upon a showing of good cause which reasonably prevented them from having filed a timely motion to intervene."

37. Neither Mr. Cronin nor any other Penn State graduate assistant had been deemed a "public employe" for purposes of collective bargaining until February 6, 2018, when the Hearing Examiner concluded as much in his Proposed Order.

38. The Hearing Examiner's Proposed Order was inconsistent with longstanding Pennsylvania Supreme Court precedent and relied for legal support on an unappealed Board decision that conflicted with *PAIR* and presented facts distinguishable from the instant matter.

39. Mr. Cronin became aware on or about March 8, 2018, of Penn State's tentative agreement with the Coalition to hold representation elections.

¹ Again, Mr. Cronin does not concede that graduate assistants are "public employes" for purposes of section 95.44(b) of the Board's Rules and Regulations.

40. The parties to this matter have not requested the Board's review or a stay in this matter.

41. In fact, Penn State has tentatively agreed with the Coalition to hold a representation election.

42. No other graduate assistants or trainees have intervened in this matter.

IV. THE BOARD REPRESENTATIVE'S DECISION OR ORDER "ADOPT[ING], REJECT[ING], OR MODIFY[ING]" THE HEARING EXAMINER'S PROPOSED ORDER SHOULD BE REVIEWED AND STAYED

43. Irrespective of the Board's determination as to Mr. Cronin's intervention or participation, this Board should review and stay this matter pursuant to section 95.91(k)(2)(iii) of the Board's Rules and Regulations following the Board Representative's expected decision or order "adopt[ing], reject[ing], or modify[ing]" the Hearing Examiner's Proposed Order. 34 Pa. Code § 95.91(k)(2)(ii).

44. As the Hearing Examiner noted in his Proposed Order, "it is my duty to apply Board decisions and i[s] not my duty to overrule Board authority. Thus [Penn State's] arguments on these grounds are more properly addressed to the Board." Proposed Order 25.

45. However, the Board declined to exercise *sua sponte* review of the Hearing Examiner's Proposed Order pursuant to section 95.98(g) of the Board's Rules and Regulations.

46. As of the date of this filing, there has been no Board Representative decision or order “adopt[ing], reject[ing], or modify[ing]” the Hearing Examiner’s Proposed Order as required by section 95.91(k)(2)(ii) of the Board’s Rules and Regulations.

47. Section 95.91(k)(2)(iii) of the Board’s Rules and Regulations permits that “an aggrieved party may file a written request for review with the Board” of the Board Representative’s decision or order. Such “request for review will be granted only where the order or direction of the Board Representative is clearly erroneous and prejudicially affects the rights of the party seeking review.” 34 Pa. Code § 95.91(k)(2)(iii).

48. Should the Board Representative’s decision or order adopt even portions of the Hearing Examiner’s Proposed Order in this matter, Mr. Cronin anticipates that such decision or order would be clearly erroneous and prejudicially affect his rights.

49. Moreover, the gravity and novelty of the legal issues raised before the Hearing Examiner—and which the Hearing Examiner felt he could not fully address—suggest that the Board should review any decision or order, when rendered, pursuant to section 95.91(k)(2)(iii) of the Board’s Rules and Regulations.

50. Furthermore, a stay will be necessary given the legal impact of the Proposed Order on Mr. Cronin and many other similarly situated individuals, his and their direct interest in the subject matter, and the likelihood of reversal of the Proposed Order by the Board or on appeal.

51. It would be a great misuse of time, energy, and resources to conduct an election that will ultimately turn on the threshold legal issue of whether graduate assistants are “public employes” for purposes of PERA, particularly where longstanding Pennsylvania Supreme Court precedent answers that question in the negative.

52. Accordingly, following issuance of the Board Representative’s expected decision or order, Mr. Cronin intends to file a self-contained Request for Review pursuant to section 95.91(k)(2)(iii) of the Board’s Rules and Regulations requesting review of the decision and order and requesting a stay of the proceedings.

53. For that purpose, Mr. Cronin requests that he be notified as to issuance of the Board Representative’s decision or order “adopt[ing], reject[ing], or modify[ing]” the Hearing Examiner’s Proposed Order and “set[ting] forth the findings of fact, conclusions of law, discussion and order or direction” as required by section 95.91(k)(2)(ii) of the Board’s Rules and Regulations.

WHEREFORE, Mr. Cronin respectfully requests that he be permitted to intervene or participate in the above-referenced matter, requests in advance of the issuance of the Board Representative’s decision or order that the Board review such decision or order and stay the proceedings pending the Board’s determination concerning Mr. Cronin and other graduate assistants of Pennsylvania State University, and that Mr. Cronin be notified of the Board Representative’s decision or order

“adopt[ing], reject[ing], or modify[ing]” the Hearing Examiner’s Proposed Order. 34
Pa. Code § 95.91(k)(2)(ii).

Respectfully Submitted,

THE FAIRNESS CENTER



Dated: March 23, 2018

David R. Osborne

Pa. Attorney I.D. No. 318024

E-mail: david@fairnesscenter.org

Nathan J. McGrath

Pa. Attorney I.D. No. 308845

Email: nathan@fairnesscenter.org

THE FAIRNESS CENTER

500 North Third Street, Floor 2

Harrisburg, Pennsylvania 17101

Phone: 844.293.1001

Facsimile: 717.307.3424

Counsel for Mr. Cronin

VERIFICATION

I, Michael Cronin, being subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in the foregoing Motion to Intervene or Participate and Advance Request for Review and Stay are true and correct to the best of my knowledge, information and belief.

Date: 23 March 2018

By: Michael Cronin

EXHIBIT A

Graduate Assistant Michael B. Cronin's Affidavit of Interest

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD**

IN THE MATTER OF THE
EMPLOYEES OF
THE PENNSYLVANIA STATE
UNIVERSITY

Case No. PERA-R-17-40-E

**GRADUATE ASSISTANT MICHAEL CRONIN'S
AFFIDAVIT OF INTEREST**

I, Michael B. Cronin, state as follows:

1. I am a doctoral student of Energy and Mineral Engineering at the Pennsylvania State University ("Penn State"), where I am working with two faculty advisors on my dissertation.
2. I anticipate graduating in 2020.
3. I am also furthering my education by serving as a graduate assistant. I have both research and teaching assignments.
4. I accepted my appointment(s) to further my education. My appointment(s) confer tangible, relevant professional development opportunities and training.
5. Had I merely sought to earn money as an employee during my time as a doctoral student, I could have and would have done something other than being a graduate assistant.

6. In fact, were I not a doctoral student, I would be a strong candidate for full-time employment as a reservoir engineer, as I have strong numerical simulation and geologic modeling experience with dual training in Petroleum and Natural Gas Engineering (B.S.) and Geological Sciences (B.S., M.S.).

7. As a graduate assistant, I have both teaching and research assignments. My research duties include conducting extensive literature searches, developing new toolsets (analytical and/or numerical) to investigate fundamental and applied concepts relevant to mass transport in porous media, preparing grant applications/funding proposals, and disseminating new knowledge via journal publications and presentations (internal and external) under supervision of my two co-advising professors in my field of study. My teaching duties include grading, holding office hours, conducting laboratory sessions, helping to prepare homework assignments and exam materials, and proctoring exam sessions, all under supervision of professors in my field of study.

8. My graduate assistant appointments are half-time (20 hours weekly).

9. I receive a stipend every month, health insurance, and paid tuition and fees. Such financial support facilitates my graduate school attendance.

10. The duties I perform as a function of my service as a graduate assistant are primarily educational and train me for a future career.

11. For example, one very important duty for technical specialists in my field—those holding doctoral degrees in particular—is to run internal training

courses. As a teaching assistant for a class entitled “Petroleum Engineering Capstone Design,” I received first-hand, supervised experience in providing such training; in that context, I presented lectures or tutorials about integrated reservoir characterization and simulation using commercial reservoir simulation software.

12. More generally, teaching and research appointments are extremely helpful when seeking employment in academia because search committees want candidates with excellent research skills, an ability to obtain funding, and teaching skills.

13. On February 25, 2018, I was notified by Penn State that I was eligible to vote in an election to determine whether graduate assistants and trainees would be represented by the Coalition of Graduate Employees.

14. I do not want or need exclusive representation by the Coalition of Graduate Employees or any other union.

15. I do not consent to the Coalition of Graduate Employees representation or to association with the Coalition of Graduate Employees.

16. Instead, I desire an unmediated relationship with my supervisors and the power to negotiate my own terms and conditions of my appointment as a graduate assistant.

17. I should be free to speak for myself.

I, Michael B. Cronin, being subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, hereby state that the facts set forth in the

foregoing affidavit are true and correct to the best of my knowledge, information, and belief.

Date: 23 MARCH 2018

By: Michael B. Cronin
Michael B. Cronin

EXHIBIT B

February 6, 2018 PLRB Hearing Examiner Proposed Decision and Order

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-R-17-40-E
:
THE PENNSYLVANIA STATE UNIVERSITY :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On February 22, 2017, the Coalition of Graduate Employees, PSEA/NEA (Coalition or Union) filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board) alleging a thirty percent showing of interest and seeking to represent a unit of all full-time and regular part-time workers of the Pennsylvania State University (University or Employer), including but not limited to Teaching Assistants and Research Assistants as well as all other Graduate Assistants and Fellows; and excluding all other employees as defined in the Public Employee Relations Act (PERA or Act). On March 10, 2017, the Secretary of the Board issued an Order and Notice of Hearing, in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating May 15, 2017, in Harrisburg, as the time and place of hearing, if necessary.

The hearing was necessary. On April 10, 2017, the Hearing Examiner continued the hearing scheduled for May 15, 2017, and scheduled multiple days of hearings in September, 2017, in State College. The continuance of the May 15, 2017, hearing was issued over the objection of the petitioner Coalition. A hearing was held in State College on September 5, 6, 7, 8, 11, 12, and 13, 2017, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Coalition filed its post-hearing brief on November 15, 2017. The University filed its post-hearing brief on December 21, 2017. The Coalition filed a reply brief on January 4, 2018.

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

FINDINGS OF FACT

1. The University is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6-7).

2. The Coalition is a group of graduate students who came together in early 2014 to represent the economic interests of graduate assistants at the University. The Coalition initially formed, in part, in response to health insurance issues experienced by graduate students. Soon after it began, the members of the Coalition discussed forming a union of graduate assistants. The Coalition's mission is to form a legally recognized union of public employees in order to obtain better working conditions, financial security, stable healthcare through collective bargaining with the University. The Coalition has been affiliated with the Pennsylvania State

Education Association (PSEA) since December, 2015. (N.T. 23-29; Coalition Exhibit 2).

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

4. The University has many graduate students in a variety of programs. The University has 93 research doctorate programs which award a Doctor of Philosophy degree (Ph.D. or PhD). The University has approximately 100 research master's degree programs which award the Master of Arts or the Master of Science. The University also has professional doctorate degree programs such as the MBA, the MD and the JD. The University, in total, has approximately 13,000 - 14,000 graduate students in its various programs. The University has approximately 4,000 Ph.D. students at the University. (N.T. 254-257, 263, 293, 355-356; University Exhibit 16).

5. The Ph.D. programs have similar requirements. The emphasis of the Ph.D. is to train students to be researchers. At the most basic level the general requirements (benchmarks or milestones) for the attainment of a Ph.D. are a period of residence, the writing of a satisfactory dissertation accepted by the doctoral committee, and the passing of a comprehensive examination. The doctoral programs consist of such a combination of course seminars and individual study and research/scholarship as meets the minimum requirements of the University. After admission, and after a graduate student has completed at least 18 graduate credits and before the end of their third semester in a program, they are required to take a candidacy or qualifying exam. The purpose of this exam is to determine if the graduate student is capable of doing doctoral-level study. The next critical element is the comprehensive examination, generally given after most of their coursework is completed which is usually in the graduate student's third year. The purpose of this examination is to determine if the student is ready to embark on their dissertation research. For the comprehensive exam, the graduate student is expected to demonstrate comprehensive knowledge of their field, to demonstrate that the graduate student is embarking on their own research of their dissertation question, and that the graduate student has the skills necessary to finish their dissertation. The graduate student must also demonstrate proficiency in English. The graduate student must then complete their dissertation and defend it to receive their Ph.D. (N.T. 45, 63, 276-283, 898-901, 1134-1135; Coalition Exhibit 14).

6. A minimum grade point average of 3.00 for work done at the University is required for admission to the candidacy examination, the comprehensive examination, and the final oral examination. (Coalition Exhibit 14).

7. The University awards approximately 4,000 graduate assistantships each year to degree-seeking graduate students. Graduate students on assistantships (graduate assistants) are often assigned to be teaching assistants or research assistants. A small number are assigned to be administrative support assistants. Assistantships include a stipend, tuition remission, and a subsidy for medical insurance which pays 80% of the premium of the student health insurance plan. Graduate assistants are required to work in the classroom or laboratory, or in other areas on campus. The University also commonly awards fellowships and traineeships. With fellowships, the graduate student receives a stipend, tuition remission, and health care benefits similar to the assistantship, but there is no required

work commitment (teaching or research); they are duty-free. A traineeship is similar to an assistantship since there is a stipend, tuition remission, and health care benefits. A traineeship is derived from agencies outside the University and are intended to support a specific student learning experience. (N.T. 285-291, 350, 357-358, 380-381, 476, 611-612, 724; University Exhibit 7, 18, 19; Coalition Exhibit 7, 18, 24).

8. In fiscal year 2015, the University had approximately 3,855 graduate assistants. Of that number, approximately 2,936 were teaching assistants, 898 were research assistants, and 21 were graduate assistants performing other administrative support tasks. In the fall of 2016, the University had approximately 3,915 graduate assistants. Of this number, approximately 3,724 were located at the main campus of University Park, 34 were located at the Commonwealth Campus, and 153 were located at Hershey in the College of Medicine. (N.T. 357-363; 732; Coalition Exhibit 18, 22).

9. The University has 100 university graduate fellowships (UGFs). These are allocated through the Graduate School to the Ph.D. programs. These are used to recruit the most competitive students to the University's Ph.D. programs and can include a stipend of \$30,000. In addition to the 100 UGFs, the University has various other funds to recruit diverse students and add to the aid packages of competitive students, and to recognize excellence. (N.T. 291-295).

10. Assistantships are only available to degree-seeking students who meet the credit requirements and must be in residence. (N.T. 298).

11. The vast majority (over 90%) of assistantships are "half-time" which means the graduate student is enrolled for at least 9 credit hours. 9 credit hours is a full-time student (not to be confused with the half-time assistantship). A graduate student on a half-time assistantship, which are the vast majority, is expected to provide teaching, research, or administrative services that, on average, consist of approximately 20 hours a week of work. On a teaching graduate assistantship, this would mean 20 hours per week of teaching responsibilities and on a research graduate assistantship this would mean 20 hours of conducting research. The minimum stipend for a half-time assistantship is approximately \$19,600. A graduate student on a one-quarter-time assistantship is expected to provide approximately 10 hours of work. A graduate student on a three-quarter-time assistantship is expected to provide approximately 30 hours of work. (N.T. 312, 384, 666-667; University Exhibit 9, Coalition Exhibit 24).

12. Graduate assistants may receive paid leave benefits in certain circumstances. (N.T. 388-389, 464; Coalition Exhibit 24).

13. An example of an approximate annual total value for a half-time graduate assistant, who chose individual health coverage, would be between \$46,542 to \$53,346. This includes \$19,978 in a stipend for 36 weeks at 20 hours per week of duties, \$16,460 in Fall/Spring tuition remission, \$7,405 - \$14,209 in Summer tuition remission, \$2,443 in total medical insurance subsidy, and \$256 in total dental and vision subsidy. (Coalition Exhibit 24).

14. Completion or acceptance of a graduate assistantship or traineeship is not a requirement for a degree at the University. A graduate student is free to turn down assistantships or traineeships. No graduate

student is required to accept an assistantship or traineeship. A graduate student without an assistantship or traineeship has the same academic requirements for his or her degree. (N.T. 66, 368, 383, 595-596, 851, 910, 931, 947, 1028, 1104).

15. Graduate assistantships may be terminated by the University due to inadequate performance. The University publishes detailed procedures for such a termination. The decision to terminate a graduate assistantship is usually made by the head administrator of the academic program to which the graduate assistant belongs with input from the graduate assistant's supervisor. Graduate assistantships have been terminated for inadequate teaching or research performance. A fellowship has never been terminated for inadequate performance of duties because no duties are required of graduate students on fellowship. (N.T. 373-378, 474-476; Coalition Exhibit 17).

16. Graduate assistantship offers are extended initially on the expectation that a graduate student can complete the program and then continue adequate progress towards a degree. (N.T. 570-571, 613, 897).

17. Graduate students take up to 6 years to obtain their Ph.D. On rare occasions a student may take more than 6 years to obtain their Ph.D. The median time to a Ph.D. degree across all Ph.D. programs is 5.3 years. (N.T. 45, 63, 313, 1112).

18. Funding through graduate assistantships is typically guaranteed to be available for a least 5 to 6 years. (N.T. 133, 165, 313, 611, 767, 851-852, 897, 911, 1112; Coalition Exhibit 12).

19. A bachelor's degree is required to be offered a graduate assistantship. (N.T. 51; Coalition Exhibit 4).

20. Graduate students may at different times of their studies be research assistants or teaching assistants. (N.T. 63, 165, 353, 531, 846-847)

21. Prior to engaging in their duties as a graduate assistant, a graduate student is presented a document entitled "Terms of Offer and General Conditions of Graduate Assistant Appointment" (Terms of Offer form). The Terms of Offer form is a form created by the relevant department whenever the department offers an assistantship to a graduate student. Every graduate student who receives an assistantship must sign this Terms of Offer form each semester. Austin Geiger, a graduate student in the Department of Psychology, received the following Terms of Offer form prior to beginning his research assistantship. Geiger's Offer Document states in relevant part:

I. Terms of Offer

Offer Made to: Austin Geiger

Date of Offer: 05/05/2016

Total Stipend: at least 23,130

Plus Remission of Graduate Assistant Rate Tuition: YES

Starting Date of Assistantship: 08/15/06

Ending Date of Assistantship: 05/10/2017

Department* Name: Psychology

Estimated Weekly Hours: 20 hours

Level of Assistantship: ¼ Time ½ Time ¾ Time

Contingent Upon Your Enrollment as a Graduate Student in the Major Field of: PSYCHOLOGY

Date Upon Which to Report: 08/15/2016

Report To: Sherri Gilliland

Status of Admission: Admitted Admission Recommended to Graduate School

In carrying out their duties, graduate students are expected to maintain the same high standards of ethical and moral behavior expected of faculty members (see Policy AD47, "General Standards of Professional Ethics").

Satisfactory performance of both assistantship duties and academic duties is a condition of the appointment. An assistantship may be terminated if a graduate student fails to meet departmental standards. Procedural guidelines are available in Appendix IV of the Graduate Degree Programs Bulletin

Additional paper work is required to finalize all new assistantship appointments. Please contact your department for information.

An early acceptance (or refusal) would be appreciated. If you accept an offer for fall semester before April 15, you are free to withdraw your acceptance until that date. An acceptance left in force beyond April 15 is commitment not to accept an offer from any other university for the period of this offer. If you have received an offer after April 15, you have ten (10) working days from the date of the offer (given above) to accept. One signed copy of this offer should be returned; the other is for your files. Acceptance of this offer will not preclude you from being offered a fellowship or traineeship at a later date. Should you be offered such an appointment at The Pennsylvania State University, you are free to resign from this appointment to accept the better offer.

* Wherever the word "department" appears, it refers to the unit with fiscal responsibility for the student's assistantship.

II. General Conditions of a Graduate Assistantship Appointment

Period of Appointment

The Pennsylvania State University operates on a semester calendar system. The period of instruction each semester is 15 weeks. Graduate assistants are appointed for 18 weeks of activities each semester. Each semester begins with an orientation period preceding

the start of classes and ends with a final examination period. Graduate assistants with teaching duties often are assigned work starting during registration week and will often have work (such as paper correcting and grading) to complete lasting several days past the end of classes each semester. All graduate assistantship appointments are made for one or two semesters or for the Summer Sessions. An academic year appointment (36 weeks) will usually begin on the Monday following the last day of Summer Session final exams and continue until the last day of exams for the spring semester, less period of time classes are suspended at Thanksgiving and during Winter and spring breaks. In cases of later start date or breaks in activities during the appointment, students are expected to be involved in assistantship activities for a cumulative total of 18 weeks per semester.

The period of appointment being offered to you is set forth above. Preference in renewals normally is given to those students who have shown superior aptitude in the performance of assistantships duties and academic progress. A graduate assistantship may be terminated prior to the completion of the full term of appointment if the student fails to meet departmental standards as described above, following due process procedures as described in Appendix IV of the Graduate Degree Programs Bulletin, "Procedure for Termination of Assistantships Due to Inadequate Performance,"

Eligibility

New appointments are contingent upon the student's admission to the Graduate school as a degree-seeking student enrolled in residence. All domestic graduate assistants must have received from a regionally accredited institution a baccalaureate degree earned under residence and credit conditions substantially similar to those required by The Pennsylvania State University

Objective of Assistantship

Graduate assistants are students, and graduate assistantships provide pedagogic experiences designed to make students better instructors researchers, and scholars. Thus, it is the general policy to assign graduate assistants largely scholarly tasks that will provide a useful and meaningful experience in their major field. Assistantships may include classroom teaching, research, and other work as assigned by the department.

Will all of the duties assigned to the student be required of every degree candidate in the applicable program as a condition of receiving a degree?

FALL SEMESTER - YES NO SPRING SEMESTER - YES NO

Employment Prohibition

Additional compensation may be paid to a graduate assistant by the University for additional hours of work only with special, advance approval of the administrative head of the academic unit in which the assistantship is held and the chair of the student's academic

program, provided that such compensation is not for additional hours of work on the assigned assistantship duties.

Payment

Assistantship stipends are paid monthly. For the Fall semester, graduate assistants will be paid 1/5 of the semester stipend at the end of August (if processed in time), September, October, November, and December. For the Spring semester, graduate assistants will receive 1/5 of the semester stipend at the end of January (if processed in time), February, March, April, and May. Students on assistantships during the Summer Session will be paid half of the stipend at the end of June and half at the end of July.

Credit Load

Graduate assistants must be enrolled at Penn State as graduate students working towards advanced degrees

. . . .

Tax Withholdings

The University is required to withhold all applicable taxes from assistantship paychecks. Therefore, students on assistantship will receive a W-2 form at the end of each calendar year summarizing funds received and taxes withheld.

Health Insurance

International graduate assistants are required to have health insurance coverage for themselves and their dependents in the United States. For domestic graduate assistants, University health insurance is optional. The University provides a health insurance benefit as part of the assistantship contract. The University will pay a percentage of the annual premium for the Penn State Student Health Insurance Plan. The remaining percentage will be automatically deducted from the student's assistantship stipend. The University will not supplement, nor will a payroll deduction be made, for insurance policies other than the Penn State Student Insurance Plan.

International graduate assistants who have adequate medical coverage and who do not wish to be enrolled in the Penn State Student Health Plan must submit a waiver application. . . .

Domestic graduate assistants will automatically be enrolled in the Penn State Student Health Insurance Plan. Domestic graduate assistants who do not wish to be enrolled in the Penn State Student Insurance Plan must decline the insurance. . . .

. . . .

(NT. 46, 189-190, 308, 363, 724-725, 746, 934; Coalition Exhibit 4).

22. Liana Glew received a Terms of Offer form from the University when she received a graduate assistant appointment for a teaching assistantship for the 2016 academic year. Glew's Offer Document states in relevant part:

I. Terms of Offer

Offer Made to: Liana Glew

Date of Offer: 07/25/16

Total Stipend: approx. \$19,350.00

Plus Remission of Graduate Assistant Rate Tuition: YES

Starting Date of Assistantship: 08/15/06

Ending Date of Assistantship: 05/10/2017

Department* Name: ENGLISH

Estimated Weekly Hours: 20 hours

Level of Assistantship: ¼ Time ½ Time ¾ Time

Contingent Upon Your Enrollment as a Graduate Student in the Major Field of: ENGLISH

Date Upon Which to Report: 08/15/2016

Report To: Debra Hawhee, Director of Graduate Studies

Status of Admission: Admitted Admission Recommended to Graduate School

(N.T. 104; Coalition Exhibit 9).

23. In all other respects, except for the signature lines, Glew's Terms of Offer form had identical language to the Terms of Offer form language transcribed in Finding of Fact 21 above. (Coalition Exhibit 4, 9).

24. Attached to Glew's Terms of Offer form was a document entitled "Conditions of Employment for Lecturers/Graduate Teaching Assistants, 2016-2017" which states in relevant part:

DEPARTMENT OF ENGLISH

Conditions of Employment for Lecturers/Graduate Teaching Assistants, 2016-2017

1. Your academic credentials will be on file in the department before the beginning of the period covered by this offer.

2. The base teaching assignment varies according to your rank and administrative responsibilities.

3. Your teaching will be evaluated each semester by your students in each of your sections during the last two weeks of the semester. An email notification will be sent to you indicating when the students are able to complete the electronic evaluations.
4. Full-time instructors will undergo an annual review of performance of all duties assigned by the department.
5. Acceptance of this position includes responsibility for attending occasional informational meetings as the program may announce and full participation in the mentoring program during the first academic year.
6. Lecturers will be expected to participate in professional development on a regular basis, either by attending three sessions of the PWR Lecturer Series each academic year or by enrolling in a teaching practicum (usually every four years).
7. During your first year of teaching any course, you will use the course syllabi, textbooks, and grading standards developed for or adopted by the 602s or committees responsible for the course(s) you teach.
8. After the first year, you agree to
 - use approved books (if there is such a list in the course you're teaching)
 - use the current Penn Statements in every section of English 004, 015, 015A, 030, or 030S that you teach
 - include the required number of formal essays (if there is such a requirement in the course that you're teaching)
 - rely on the grading standards developed for that particular course (if there are such grading standards for the course you are teaching)
 - supply our students with a written-out syllabus (print or electronic) that includes the schedule of events, course requirements, and written-out assignments (including criteria for evaluation), grading, and attendance policies during the first week of the semester.
9. Any departures from already approved syllabi, textbooks, and grading standards must receive prior written approval from either the Director or Associate Director of the Program in Writing and Rhetoric, or the Course Coordinator, depending on the Course.
10. Your enrollment in any 602 is an expectation of your weekly attendance.
11. You will hold office hours at least three hours per week and stagger the times so as to be available during at least two different periods and inform students in writing of your office hours and post your office hours on or near your office door.

12. You must hold class. In the case that you cannot, you must inform either the Director of PWR or the Associate Head (depending on course) and arrange for a qualified substitute (someone approved by the Director of PWR or the Associate Head). If you cannot arrange for a substitute, inform the appropriate office as early as possible.

13. I accept this appointment.

[Signature line]

(Coalition Exhibit 9).

25. Graduate students on graduate assistantship are often assigned to be teaching assistants. Teaching assistants perform a variety of teaching tasks including preparing lesson plans and syllabi, lecturing, leading discussion groups, holding practicums, leading laboratory sections, and grading assignments and exams. Teaching assistants may teach their own courses to undergraduates as instructor of record. They also may be responsible for instructing undergraduate students in recitation sections or leading laboratory sections for classes where they are not the instructor of record. Classes are assigned to teaching assistants by their department. Teaching assistants hold regular office hours. Teaching assistants perform their duties in the classroom, classroom laboratory, and their assigned office. Teaching assistants perform from 20 to 35 hours of teaching duties per week. (N.T. 103, 104-106, 157-159, 536-537, 606-607, 624-625, 641-644, 649, 685-686, 843-845, 853, 859, 917, 922-926, 932, 951-966, 1040-1044, 1099-1101, 1107-1108, 1118; University Exhibit 20).

26. Teaching assistants have flexible schedules regarding grading and when to hold some office hours, but they have to be in a classroom at certain times and must hold some office hours at certain times. (N.T. 105, 117, 158-159).

27. Teaching assistants may teach undergraduates on their own with no other faculty in the classroom. In large classes, two teaching assistants may be assigned to that class. (N.T. 105-106, 159, 1046-1047).

28. Teaching assistants sometimes meet each week with other teaching assistants and the course coordinator to discuss topics relevant to teaching courses. (N.T. 166-167).

29. Teaching assistants are not allowed to have other employment while performing as a teaching assistant. (N.T. 106; Coalition Exhibit 9).

30. Teaching assistants are paid a monthly stipend. (N.T. 108, 160-161; Coalition Exhibit 9).

31. Teaching assistants receive health care benefits as in exchange for performing services for the University. (Coalition Exhibit 9).

32. Teaching assistants are taxed on the money received from the University in exchange for their services. (N.T. 108, 161; Coalition Exhibit 9).

33. Teaching assistants receive a W-2 from the University. (N.T. 108, 161; Coalition Exhibit 9).
34. Teaching assistants are required to have a bachelor's degree. (N.T. 108, 161; Coalition Exhibit 9).
35. Teaching assistants often interact with other teaching assistants. (N.T. 108-109, 161).
36. Prior to beginning teaching in the fall for the first time, teaching assistants engage in an orientation period with other first time teaching assistants. (N.T. 110-111, 167, 920, 956).
37. Teaching assistants teaching duties may not be related to the degree sought by the teaching assistant. (N.T. 161, 169-170).
38. Graduate students are referred to as teaching assistants if they are performing teaching duties regardless of whether they are receiving a graduate assistantship, a traineeship, or on fellowship. (N.T. 525, 543, 576, 801, 1096-1097).
39. Graduate students on graduate assistantship are often assigned to be research assistants. Research assistants perform research services which include designing academic studies, computer programming, designing experiments, conducting experiments, collecting data, analyzing data, manipulating data, and preparing written reports and papers for academic publication. Work is typically performed in the research assistant's office on campus, in the University's libraries, in a specialized laboratory, or in the field. Research assistants are usually expected to work at least 20 hours per week but sometimes work up to 40 or 50 hours a week. Research assistants are evaluated by their faculty advisors. Research assistants often work closely with their mentor faculty, other graduate students, and staff. A research assistant's research typically becomes more sophisticated over their years in residence. (N.T. 44-48, 51, 509-510, 513-515, 601-602, 616, 634-640, 651, 676, 702, 763, 791-792, 853-854, 870-878, 902-903, 914, 927-929, 992-993, 1005).
40. Research assistants are paid monthly in exchange for providing services to the University. (N.T. 48; Coalition Exhibit 4).
41. Research assistants receive health care benefits as in exchange for performing services for the University. (N.T. 65; Coalition Exhibit 4).
42. Research assistants are taxed on the money received from the University in exchange for their services. (N.T. 49; Coalition Exhibit 4).
43. Research assistants receive a W-2 from the University. (N.T. 49; Coalition Exhibit 4).
44. Research assistants have a flexible schedule with some mandatory meetings. (N.T. 47).
45. Research assistants sometimes perform services for work that is not related to their own dissertation required for a Ph.D. (N.T. 49, 59, 341, 664).

46. Research assistants sometimes do not receive any academic credit for work done as a research assistant. (N.T. 50, 842).
47. Research assistants do not receive a grade for their research services. (N.T. 48).
48. Graduate students on a graduate assistantship are sometimes assigned to be an administrative support assistant. Work performed by these graduate assistants include working in administrative offices as a staff member. (N.T. 126-128).
49. Administrative support assistants work in the on-campus office of the department to which they are assigned. (N.T. 128).
50. Administrative support assistants work 20 hours a week. (N.T. 128).
51. Administrative support assistants have a fixed schedule based regular office hours. (N.T. 128).
52. Administrative support assistants are not permitted to have other employment. (N.T. 129).
53. Administrative support assistants are evaluated by their supervisors. (N.T. 129).
54. Administrative support assistants are paid a monthly stipend. (N.T. 130).
55. Administrative support assistants are offered health insurance benefits through the student health plan. (N.T. 134-135).
56. Administrative support assistants receive a W-2 from the University. (N.T. 108; Coalition Exhibit 9).
57. Administrative support assistants perform work not related to their field of study. (N.T. 130).
58. Administrative support assistants do not receive academic credit for work done as a research assistant. (N.T. 130).
59. Administrative support assistants do not receive a grade for their work. (N.T. 129).
60. Some graduate assistants receive a traineeship. A traineeship is similar to a graduate assistantship. The traineeship provides for a stipend for August through July plus full payment of tuition for fall and spring semesters. The traineeship provides for payment of 80% of the cost of the required University graduate student health insurance policy. The trainee is required to work for 10 hours per week. The trainee is expected to spend another 10 hours on his or her own work. (N.T. 64, 811; Coalition Exhibit 5).
61. The funding for the traineeship comes from a sponsoring government agency to the University. The University then distributes the money to the graduate assistant. Graduate students apply for traineeships

and are selected based on academic record, research potential, and faculty recommendation. (N.T. 68-69; Coalition Exhibit 5).

62. Graduate assistants on traineeships primarily perform the required work in their office on campus. (N.T. 64-65).

63. Graduate assistants on traineeships have a flexible schedule. (N.T. 64-65).

64. Graduate assistants on traineeships are overseen by their advisor and also the Board of the program which granted the traineeship. (N.T. 65).

65. Graduate assistants on traineeships are not permitted other employment during their traineeship. (N.T. 65; Coalition Exhibit 5).

66. Graduate assistants on traineeships are compensated through a stipend in the form of a paycheck and also health benefits. (N.T. 65; Coalition Exhibit 5).

67. The work done by Graduate assistants on traineeships is not related to the work they must do for their dissertation. (N.T. 65-66).

68. Graduate assistants on traineeships are required to have a bachelor's degree. (N.T. 66).

69. Graduate assistants on traineeships often interact with other graduate assistants. (N.T. 66).

70. Graduate students doing research normally enroll in either course number 600 or 601. Registration in 600 and 601 is the way a graduate student maintains full-time status as an enrolled student while they are preparing their thesis and dissertation. It is not required to be on a research assistantship to receive academic credit under course numbers 600 and 601. (N.T. 775, 906, 1080, 1096, 1121; University Exhibit 36).

71. Course 600 is used to designate that a graduate student is performing thesis research. (N.T. 335, University Exhibit 36).

72. After a graduate student has passed their comprehensive exam, they register for course number 601 in their subject. This course number shows they are working full time on their dissertation. (N.T. 335-336, 841; University Exhibit 36).

73. 602 is a course number for supervised and graded experience in the organization and conduct of lectures and/or laboratories at the undergraduate level and the evaluation and counseling of students. The graduate student is supervised, mentored, and evaluated by University faculty. It is preparation and orientation for performing teaching assistant duties. Graduate students usually receive one credit per semester when enrolled in course 602. Course 602 is graded, however, the grade is not counted when calculating the grade-point average or in fulfilling any specific degree requirement. Enrollment in a 602 class implies additional educational activity by the student and duties carried out in the normal course of teaching assistant assignments are not sufficient to fulfill 602 requirements. Teaching assistants also teach courses without registering for 602. Some departments do not use course number 602 at all. (N.T. 120-121,

534-535, 575, 586-589, 651-652, 685, 688, 704-708, 741-743, 803, 942-943, 1021, 1080, 1121; University Exhibit 36).

74. Teaching is sometimes required of graduate students by their programs, regardless of what type of funding that graduate student may receive. The individual academic program determines if it required graduate students to teach. Some programs require graduate students to obtain one or two credits of course 602 in the relevant subject. Many programs do not require any teaching nor any course 602 credits. Some programs that require teaching may have graduate assistants teaching and not enrolled in 602. Teaching assistants sometimes do not receive any academic credit for work done as a teaching assistant. (N.T. 107-108, 121-122, 160-161, 345-347, 524, 562, 576, 622-623, 684, 798-799, 906-907, 939, 1020-1021 ; University Exhibit 24).

75. The section of the Terms of Offer form which includes the following language is included in the document because it is relevant to whether state and local taxes are withheld from the stipend of the graduate assistant:

Will all of the duties assigned to the student be required of every degree candidate in the applicable program as a condition of receiving a degree?

FALL SEMESTER - YES NO SPRING SEMESTER - YES NO

(N.T. 308).

76. If the box is checked "YES" in the Terms of Offer form, the University does not withhold state and local taxes. The box is always checked yes. The graduate student does not make the selection. The University does withhold federal income taxes. The University does not withhold FICA (Social Security and Medicare) taxes because the University determined that withholding is not required pursuant to IRS law. (N.T. 309-310; 725, 788, 889; Coalition Exhibit 24).

DISCUSSION

The Coalition petitioned to represent a professional unit of all full time and part-time graduate workers including Teaching Assistants as well as Research Assistants as well as all other Graduate Assistants and Fellows at the University. During the hearing, the Coalition clarified that its petition was seeking to capture four categories of graduate students: research assistants, teaching assistants, graduate assistants who perform academic or professional work for the University, and graduate fellows/trainees. (Coalition's Brief at 1; N.T. 12). The University contests the petition on a variety of grounds. Based on the record, I find that a recognizable unit of public employes consisting of graduate student employes at the University exists and will order the University to prepare a list of employes eligible for inclusion in the unit described below.

PRELIMINARY JURISDICTIONAL CONSIDERATIONS

It is not contested that the University is a public employer pursuant to PERA. However, the University did not agree to stipulate that the Coalition is an employe organization pursuant to PERA. Additionally, in its Brief, the University states that the Coalition is not an employe

organization and that this "raises a jurisdictional question" under the Act. (University's Brief at 1, n. 1, page 41. N. 30).

The Act defines "employe organization" as:

An organization of any kind, or any agency or employe representation committee or plan in which membership includes public employes, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employe-employer disputes, wages, rates of pay, hours of employment, or conditions of work

43 P.S. § 1101.301(3). The Coalition is a group of graduate students who came together in early 2014 to represent the economic interests of graduate assistants at the University. The Coalition initially formed, in part, in response to health insurance issues experienced by graduate students. Soon after it began, the members of the Coalition discussed forming a union of graduate assistants. The Coalition's mission is to form a legally recognized union of public employes in order to obtain better working conditions, financial security, stable healthcare through collective bargaining with the University. The Coalition has been affiliated with the Pennsylvania State Education Association (PSEA) since December, 2015. I conclude below that the Coalition includes public employes. Thus, based on this record, I conclude that the Coalition is an employe organization.

STATUS OF GRADUATE ASSISTANTS AS PUBLIC EMPLOYES UNDER THE ACT

The Coalition petitions to include graduate student research assistants, teaching assistants, graduate assistants who perform academic or professional work for the University, and graduate fellows/trainees into a professional unit. My analysis of the petition turns to the question of whether these graduate students are employes of the University under PERA.

The relevant definition in PERA is:

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

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

The Board has previously held that graduate assistants may be public employes under PERA. In the Matter of the Employes of Temple University, 32 PPER ¶ 32044 (Order Directing Remand to the Hearing Examiner for Further

Proceedings, 2000); In the Matter of the Employees of Temple University, 32 PPER ¶ 32164 (Final Order, 2001); Nisi Order of Certification (April 6, 2001, PERA-R-99-58-E). As the details of the previous decisions in this matter are relevant to my ultimate determination and to addressing the arguments of the University, an overview of the previous relevant law is appropriate.

In Philadelphia Association of Interns and Residents v. Albert Einstein Medical Center, Temple University, 470 Pa. 562 (1977) (PAIR), the Pennsylvania Supreme Court considered on appeal a Commonwealth Court decision which reversed a Board decision which held that interns, residents, and clinical-fellows who performed work for Temple University's medical center were public employees under the Act. The Supreme Court held that medical interns, residents and clinical-fellows were not public employees under PERA because those individuals were at Temple University for the primary purpose of fulfilling educational requirements and not for the primary purpose of employment. Id., at 569. The Supreme Court opined:

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

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

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

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

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

On February 12, 1999, Temple University Graduate Students Association (TUGSA) filed a petition with the Board seeking an election in a bargaining unit comprised of "all full time and regular part time reaching assistants, research assistants, graduate assistants, teaching grant holders, future faculty fellows, dissertation fellows and university fellows" at Temple University. In the Matter of the Employes of Temple University, 31 PPER ¶ 31039 (Proposed Order of Dismissal, 2000). A hearing on TUGSA's petition was held on multiple days in 1999. After the hearing, the Hearing Examiner in that matter relied on PAIR and found that graduate students are not public employes under Section 301(2) of PERA and issued a Proposed Order of Dismissal. Id. The Hearing Examiner in that matter writes:

Application of the reasoning in PAIR to the facts of record leads to the conclusion that the graduate students holding assistantships, training grants and fellowships are not public employes within the meaning of section 301(2) of the Act. In the case of the graduate students holding assistantships and training grants, they appear to be public employes in that Temple pays them a stipend to perform services, deducts income taxes from their stipends and does not require that they be graduate assistants or training grant holders in order to earn their degrees, but the record shows that they do not go to Temple primarily for monetary gain any more than the interns, residents and clinical fellows in PAIR did. To the contrary, the record shows that their reason for being at Temple in the first place is to earn a degree. Indeed, had they not matriculated at Temple on a full time basis, they would not even be eligible for an assistantship or a training grant. In short, they, like the interns, residents and clinical fellows in PAIR, "do not go to work at Temple in the true bargained-for exchange normally associated with the employer-employee relationship." Moreover, the record shows that at least one fourth of them graduate from Temple each academic year. Accordingly, they, like the interns, residents and clinical fellows in PAIR, "do not comprise a group of persons who are attempting to establish a continual relationship with [Temple.]" In the case of the graduate students with fellowships, they do not have to perform any work for Temple for the period of the fellowship, so there is even less of a basis to find them to be public employes within the meaning of section 301(2) of the Act.

Id., (internal citations omitted).

TUGSA filed exceptions to the Hearing Examiner's Proposed Order of Dismissal. Upon consideration of the exceptions, the Board in In the Matter of the Employes of Temple University, 32 PPER ¶ 32044, issued an order directing the matter to be remanded to the Hearing Examiner for further proceedings. The Board writes:

In this case, the Graduate Assistants perform vital teaching and research services for Temple not, as the student-workers at issue in Cedars-Sinai¹ and PAIR, as a required part of their educational curriculum, but by their own choice. There is no requirement that

¹ Cedars-Sinai Medical Center, 91 LRRM 1398 (1976) (The National Labor Relations Board (NLRB) concluded that similarly-situated employes were not "employees" within the meaning of the National Labor Relations Act (NLRA).)

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

We agree with the Association that the Graduate Assistants are factually distinguishable from the residents, interns and clinical fellows at issue in PAIR. As noted above, the Graduate Assistants performed vital teaching and research services for Temple, not, unlike the workers at issue in Cedars-Sinai and PAIR, as a required part of their educational curriculum but by their own choice. There is no requirement that a graduate student perform work for Temple as a Graduate Assistant in order to obtain a graduate degree. The Graduate Assistants receive compensation from Temple in the form of stipends and tuition and book allowances and are required to perform services for Temple in exchange for that compensation. Accordingly, the Supreme Court's decision in PAIR is not dispositive of the status of the Graduate Assistants at Temple and we subscribe to the analysis set forth in the NLRB's decision in Boston Medical Center², which is even more persuasive when applied to the Graduate Assistants here. Further, the Graduate Assistants here have an established relationship with Temple for periods of one to five years. The notion that an individual whose relationship with an employer lasts for a period of more than one year would be denied employe status under PERA is contrary to our case law regarding regular part-time employes. Therefore, the Hearing Examiner's conclusion that the Graduate Assistants, as a general matter, are not "public employes" within the meaning of PERA will be vacated, along with the Hearing Examiner's conclusion that the Association is not an "employe organization" within the meaning of PERA, as that conclusion flows from the Hearing Examiner's conclusion that the Graduate Assistants are not employes.

Id., (internal citations omitted). Thus the Board, in the context of graduate assistants, distinguished the holding in PAIR and found that graduate assistants may be public employes under PERA. Though the matter was remanded to the Hearing Examiner, the parties filed a memorandum of agreement

² Boston Medical Center Corporation, 162 LRRM 1329 (1999) (The NLRB reversed its decision in Cedars-Sinai Medical Center and concluded that interns, residents and fellows clearly came within the NLRA's definition of "employe".)

on March 8, 2001, stipulating to the unit composition, the site for election, the position of the ballot, and the eligibility list. Nisi Order of Certification (April 6, 2001, PERA-R-99-58-E). An election was held on March 27 and 28, 2001, and TUGSA was designated as the exclusive representative under PERA. Id. The unit certified by the Board, which was determined by memorandum of agreement by the parties, was:

All matriculated students enrolled full-time in a graduate degree program of study who, as teaching assistants, training grant holders, graduate assistants or research assistants, regularly, as part of services rendered to the University, perform one or more of the following services and do not receive a direct academic benefit for performing the services: (1) lecture, proctor, grade, instruct a laboratory, tutor or lead recitations (either alone or with a faculty member); or (ii) perform research (library, laboratory, field/survey or clinical) either alone or with a faculty member; and excluding all other teaching assistants, graduate assistants, research assistants, fellowship recipients, training grant holders, management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.

Id. The language in this certification came from the memorandum of agreement between the parties. The parties in this matter have not agreed on language for a certification at this point, thus the Board must determine the appropriate unit certification description.

Though Temple University agreed to the certification language in the Nisi Order, above, it filed exceptions to the Nisi Order of Certification, objecting to the Board's conclusion that graduate assistants are "employes" under PERA. Temple University, 32 PPER ¶ 32164 (Final Order, 2001). The Board, in its Final Order, upheld its early decision that graduate assistants are public employes under PERA. The Board writes:

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

. . . .

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

Id. The Final Order was appealed to the Commonwealth Court by Temple University. However, Temple University ultimately withdrew its appeal and no further opinions by the Board or any Pennsylvania Court has touched on the matter of the status of graduate assistants as public employes under PERA.

As a Hearing Examiner of the Board, I am bound to apply the law as put forth by the Board in its decisions above with respect to graduate assistants. In my opinion it is clear from the decisions above that the Board considers that graduate assistants in general may be public employes under PERA. More specifically, from a close reading the language of the Board, the Board considers graduate assistants to be public employes, without any significant restriction on the scope of the unit, with the following parameters:

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

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

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

The record in this matter fully supports the conclusion that graduate assistants and graduate students on traineeship are employed by the University. The record does not support a conclusion that graduate students on fellowship are employed by the University.

The University hires approximately 4,000 graduate assistants each semester. Graduate assistants are paid a stipend, receive tuition remission, and are eligible for health care benefits which can include a subsidy for medical insurance which pays 80% of the premium of the student health insurance plan. In some circumstances graduate assistants may be eligible for paid time off. In exchange for the stipend, tuition remission, and health care benefits, the graduate assistants are required to perform duties. The University assigns graduate assistants to one of three groups based on their required duties: teaching assistants, research assistants, or administrative support assistants.

Teaching assistants perform a variety of teaching tasks including preparing lesson plans and syllabi, lecturing, leading discussion groups, holding practicums, leading laboratory sections, and grading assignments and exams. Teaching assistants may teach their own courses to undergraduates as instructor of record. They also may be responsible for instructing undergraduate students in recitation sections or leading laboratory sections for classes where they are not the instructor of record. Teaching assistants hold regular office hours. Teaching assistants perform their duties in the classroom, classroom laboratory, and their assigned office. Teaching assistants perform from 20 to 35 hours of teaching duties per week.

Research assistants perform research services which include designing academic studies, computer programming, designing experiments, conducting experiments, collecting data, analyzing data, manipulating data, and preparing written reports and papers for academic publication. Work is

typically performed in the research assistant's office on campus, in the University's libraries, in a specialized laboratory, or in the field. Research assistants are usually expected to work at least 20 hours per week but sometimes work up to 40 or 50 hours a week. Research assistants are evaluated by their faculty advisors. Research assistants often work closely with their mentor faculty, other graduate students, and staff. A research assistant's research typically becomes more sophisticated over their years in residence.

Graduate assistants also perform academic support services other than research or teaching. Work performed by these graduate assistants include working in administrative offices as a staff member. Graduate assistants performing administrative support services work in the on-campus office of the department to which they are assigned.

A graduate student on a half-time assistantship, which are the vast majority of assignments, is expected to provide teaching, research, or administrative support services that, on average, consist of approximately 20 hours a week of work. A graduate student on a one-quarter-time assistantship is expected to provide approximately 10 hours of work. A graduate student on a three-quarter-time assistantship is expected to provide approximately 30 hours of work.

All graduate assistantship appointments are made for one or two semesters or for the Summer Sessions. An academic year appointment (36 weeks) will usually begin on the Monday following the last day of Summer Session final exams and continue until the last day of exams for the spring semester, less period of time classes are suspended at Thanksgiving and during Winter and spring breaks.

The value of the stipend ranged from approximately \$19,000 to over \$30,000 for an academic year. An example approximate annual total value for a half-time graduate assistant who chose individual health coverage would be between \$46,542 to \$53,346. This includes \$19,978 in a stipend for 36 weeks at 20 hours per week of duties, \$16,460 in Fall/Spring tuition remission, \$7,405 - \$14,209 in Summer tuition remission, \$2,443 in total medical insurance subsidy, and \$256 in total dental and vision subsidy.

Assistantship stipends are paid monthly. For the Fall semester, graduate assistants will be paid 1/5 of the semester stipend at the end of August (if processed in time), September, October, November, and December. For the Spring semester, graduate assistants will receive 1/5 of the semester stipend at the end of January (if processed in time), February, March, April, and May. Students on assistantships during the Summer Session will be paid half of the stipend at the end of June and half at the end of July. The University deducts federal income taxes from the graduate assistant's paychecks.

Graduate assistants must be enrolled at Penn State as graduate students in residence working towards advanced degrees.

Prior to engaging in their duties as a graduate assistant, all graduate students are presented with a Terms of Offer form. Every graduate student who receives an assistantship must sign this Terms of Offer form each semester. This universal Terms of Offer form summarizes the employment terms and conditions for the graduate assistants. Terms and conditions covered by

the Terms of Offer form include: The amount of the stipend, the beginning and ending date of the assistantship, the weekly hours of required work, the name of a supervisor, reference to a behavior code, reference to termination procedures, the period of appointment, eligibility standards, a prohibition on other employment, payment information, information on tax withholding, and information on health insurance benefits.

Graduate assistantships may be terminated by the University due to inadequate performance. The University publishes detailed procedures for such a termination. The decision to terminate a graduate assistantship is usually made by the head administrator of the academic program to which the graduate assistant belongs with input from the graduate assistant's supervisor. Graduate assistantships have been terminated for inadequate teaching or research performance.

Graduate students take up to 6 years to obtain their Ph.D. On rare occasions a student may take more than 6 years to obtain their Ph.D. The median time to a Ph.D. degree across all Ph.D. programs is 5.3 years. Funding through graduate assistantships is typically guaranteed to be available for a least 5 to 6 years.

Completion or acceptance of a graduate assistantship is not a requirement for a degree at the University. No program or department at the University requires a graduate student to accept or complete a graduate assistantship in order to earn their degree. A graduate student is free to turn down assistantships and a graduate student without an assistantship has the same academic requirements for his or her degree.

Based on the facts above, graduate assistants are public employees under PERA. Graduate assistants receive compensation from the University in the form of a stipend, tuition remission, and health care benefits. In exchange for the compensation, they are required to perform teaching, research, and administrative support services. The terms and conditions of the relationship between the graduate assistants and the University are memorialized in a uniform Terms of Offer document. The University deducts federal income taxes from the graduate assistants' paychecks. The University terminates graduate assistantships in cases of inadequate performance of assigned duties. These facts from the record are clear evidence of an employer-employee relationship. Additionally, graduate assistants at the University have or expect to have an established relationship with the University for a period of at least one to five years or more. The record shows that graduate assistantships are usually guaranteed for five to six years. Finally, there is no requirement that a graduate student perform work as a graduate assistant in order to obtain a graduate degree. Thus, graduate assistants are public employees pursuant to PERA.

The record in this matter shows that graduate students on traineeship are in all relevant respects similar to graduate assistants. A traineeship is similar to an assistantship since there is a stipend, tuition remission, and health care benefits. A graduate student on traineeship is expected to perform work in exchange for the benefits. Therefore, graduate students on traineeships are also public employees pursuant to PERA.

Fellowships are different than graduate assistantships and traineeships. With fellowships, the recipient receives a stipend, tuition remission, and health care benefits similar to the assistantships. However

there is no required work commitment related to the fellowship. Since the graduate student on a fellowship is not required to perform any services, the required employe-employer relationship does not exist and they cannot be public employes under PERA.

APPROPRIATE UNIT

Since I have determined above that graduate assistants and graduate student on traineeships are public employes, the next step is to determine the appropriate bargaining unit under PERA. I am not bound by the unit proposed by the Coalition in its petition.

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

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

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

43 P.S. § 1101.604.

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

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

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

The general policy of the Board is "to certify units as broadly as possible in order to avoid the deleterious effects of overfragmentation." Berks County, 27 PPER ¶ 27110 (Final Order, 1996). The Board favors unit descriptions that use "including" language "so that unit clarification petitions need not be filed whenever an employe within the coverage of the

unit is hired." Beaver County Community College, 23 PPER ¶ 23070 (Final Order, 1992), *aff'd* 24 PPER ¶ 24110 (1993).

Section 301(7) of PERA provides as follows:

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

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

The professional status of the proposed employes in this matter was not contested by the University. Indeed, the record shows that graduate students on assistantship and graduate students on traineeship are professional employes under PERA. All graduate assistants and trainees are required to have a bachelor's degree and their duties require consistent exercise of discretion and judgment. All graduate assistants and trainees are also required to be graduate students in residence in the process of obtaining an advanced degree and their duties as teaching assistants, research assistants, and administrative support assistants require knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent.

Therefore, in this matter, the record shows a clear identifiable community of interest among the graduate students on assistantship and graduate students on traineeship. Examples of factors which show an identifiable community of interest from the record include: Graduate students on assistantship and graduate students on traineeship are all employed by the University; are professional employes; are paid a monthly stipend; have similar tuition remission; have access to similar health care benefits; have similar tax withholdings; may not have other employment; are required to have at minimum a bachelor's degree; are required to be admitted students in residence and working towards a degree; primarily work on campus in classrooms, laboratories, administrative and academic offices; are required to work similar hours; perform teaching, research, or administrative support services; move between being a teaching assistant or research assistant; are supervised by faculty; and have the same Terms of Offer document.

Since there exists an identifiable community of interest among the graduate students on assistantship and graduate students on traineeship, and

mindful of the Board's policy of broad-based bargaining units, I find that, based on the record as a whole, that the unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of:

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

THE UNIVERSITY'S DEFENSE

The University brings many arguments that are properly brought before the Board and not the Hearing Examiner. This section will deal primarily with the arguments raised by the University which I can address in my role as Hearing Examiner.

The University argues that graduate students at the University are not public employees under PERA because the Board's decision in Temple University, 32 PPER ¶ (32044) is inconsistent with PAIR and must be rejected. (University's Brief, pg. 43). The University argues that "PAIR provides the framework for addressing the employee status of students under PERA and is controlling on the PLRB in this matter. Thus the Hearing Examiner should look to the following factors relied on by the Supreme Court in PAIR. . . ." (University's Brief, pg. 45). However, as discussed above, I find that the Board clearly and fully distinguished PAIR and that the result in PAIR is not applicable to graduate assistants. I am bound to apply the Board's policy with respect to graduate assistants as found in Temple University, 32 PPER ¶ (32044) and Temple University, 32 PPER ¶ 32164. Thus, the University's argument on this ground is rejected.

The University further argues along this line that Temple University, 32 PPER ¶ 32044, was wrongly decided because it is inconsistent with PAIR. (University's Brief at 61). As a Hearing Examiner of the Board it is my duty to apply Board decisions and it not my duty to overrule Board authority. Thus the University's arguments on these grounds are more properly addressed to the Board.

Next the University argues that even if assuming that, *arguendo*, Temple University, 32 PPER ¶ 32044, is controlling, graduate assistants are still not public employees. (University's Brief, pg. 65). The University argues:

In Temple University, 32 PPER ¶ 32044, . . . the Board concluded that Temple graduate students *could* be public employees because: (1) they do not receive academic credit for their performance of assistantship activities; and (2) there is no requirement that a graduate student perform assistantship work in order to obtain a degree. The evidence demonstrates that graduate students at [the University], by contrast, are not public employees even under that standard because they (1) receive academic credit for activities performed on assistantships; and (2) assistantship activities are required parts of their educational curriculum. Thus, assuming that Temple University is controlling, this petition must be dismissed.

(University's Brief, ppg. 64-65). I disagree with the University's characterization of the Board's conclusion in Temple University, 32 PPER ¶ 32044. As discussed above, I found that the Board considers that graduate assistants in general may be public employees under PERA. I found that the Board considers graduate assistants to be public employees, without any significant restriction on the scope of the unit, with the following parameters:

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

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

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

In the context of this argument, the University does not appear to strongly contest factors (1) and (2) but instead focuses on (3).

The University argues that graduate assistants in this case cannot be public employees because Temple University concluded that Temple graduate students could be public employees because there is no requirement that a graduate student perform assistantship work in order to obtain a degree and that in this case, contrarily, the University requires assistantship activities as part of their educational curriculum at the University. However, I find that the record in this matter is extremely clear that performing work on a graduate assistantship is not required to complete any educational requirements at the University. I further reject the University's argument to the extent it misconstrues the holding in Temple University and conflates the educational requirements with the requirement to perform work as part of an assistantship.

The University argues that graduate assistants in this case cannot be public employees because Temple University requires that they do not receive academic credit for their performance of assistantship activities and that graduate assistants at the University receive academic credit for activities performed on assistantships. I do not agree with the University's characterization of the Board's policy for the following reasons.

The Board's Order Directing Remand notes: "[T]he Graduate Assistants do not receive academic credit for the performance of their duties." Temple University, 32 PPER ¶ 32044. The Board's Final Order notes: "The graduate assistants receive no academic credit for their performance of graduate assistant work." Temple University, 32 PPER ¶ 32164. I interpret these sentences in the Board's Orders to only reinforce the Board's focus on the fact that the graduate students were not receiving academic credit for being graduate assistants. In other words, I interpret the Board to have meant that it was important in those cases that the status of being a graduate assistant does not lead directly to academic credit. I do not interpret this language from the Board to mean that, if the work done by a graduate assistant happens to be correlated to a course which grants academic credit, the graduate assistant is disqualified as a public employee under PERA. Such a conclusion would run counter to the Board's conclusion that the receipt of

academic benefit in connection with employment duties does not damage employe status under PERA. The Board view on this issue is elucidated in its Final Order when it positively cites New York University, 165 LRRM 1241 (2000), and writes:

The Employer also argues that the graduate assistants should be denied bargaining rights under PERA because their work as graduate assistants, in some but not all instances, is tailored to their individual academic interests and provides them with academic training for their eventual careers. The NLRB in New York University addressed and rejected the same argument as follows:

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

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

Further, this record shows that the receipt of academic credit for work performed as a teaching assistant or research assistant is not uniform and in many cases merely a mechanism whereby a student can maintain status as an enrolled student.

Research assistants normally enroll in either course 600 or 601. Registration in 600 and 601 is the way a graduate student maintains full-time status as an enrolled student while they are preparing their thesis and dissertation. Importantly, it is not required to be on an assistantship to receive academic credit under course numbers 600 and 601. Research assistants do not receive a grade for their research services. Regardless of course numbers 600 and 601, research assistants sometimes do not receive any academic credit for work done as a research assistant and sometimes perform services for work that is not related to their own dissertation required for a Ph.D.

The practices of the University with regard to teaching assistants vary widely across departments. 602 is a course number for supervised and graded

experience in the organization and conduct of classroom activities and the evaluation and counseling of students. The graduate student is supervised, mentored, and evaluated by University faculty. It is preparation and orientation for performing teaching assistant duties. Graduate students usually receive one credit per semester when enrolled in course 602. It is graded however the grade is not counted when calculating the grade-point average or in fulfilling any specific degree requirement. Enrollment in a 602 class implies additional educational activity by the student and duties carried out in the normal course of teaching assistant assignments are not sufficient to fulfill 602 requirements. Teaching assistants also teach courses without registering for 602. Some departments do not use course number 602 at all.

While teaching is sometimes required of graduate students by their programs, it is always required regardless of what type of funding that graduate student may receive. The individual academic program determines if it required graduate students to teach. Some programs require graduate students to obtain one or two credits of course 602 in the relevant subject. Many programs do not require any teaching nor any course 602 credits. Some programs that require teaching may have graduate assistants teaching and who are not enrolled in 602. Teaching assistants sometimes do not receive any academic credit for work done as a teaching assistant and teaching assistants' teaching duties may not be related to the degree sought by the teaching assistant.

Based on this record, it is overwhelmingly clear that graduate assistants never receive academic credit for the status of being a graduate assistant and being a graduate assistant is never required by any program or department. Work done as a research assistant is related to academic credit only in the sense that graduate students normally enroll for classes 600 or 601 to maintain full-time status as an enrolled student while they are preparing their thesis and dissertation. This work is never graded. Work done as a teaching assistant is only sometimes directly related to a course 602 credit and a 602 credit is only sometimes required by departments.

The University further argues "because the unrebutted evidence proves that students throughout [the University's] graduate programs receive academic credit and grades for their research and teaching activities, which are often one and the same as their assistantship activities, they are not public employees under Temple University." (University's Brief, pg. 67). As I find above, I disagree with the University's assertion that receipt of academic credit disqualifies a graduate assistant for public employe status and I also disagree with the University's characterization of the record.

The University also points to its own Terms of Offer document as evidence for its argument that activities performed on assistantship are required parts of a student's educational curriculum. (University's Brief, pg. 67). The relevant section of the Terms of Offer form includes the following language:

Will all of the duties assigned to the student be required of every degree candidate in the applicable program as a condition of receiving a degree?

FALL SEMESTER - YES NO SPRING SEMESTER - YES NO

Importantly, the box is always checked yes and the graduate student does not make the selection. It is included in the Terms of Offer because it is relevant to whether state and local taxes are withheld from the stipend of the graduate assistant. Since the box is checked "YES" in the Terms of Offer form, the University does not withhold state and local taxes. I do not find this evidence persuasive as the language is controlled by the University, the box is checked by the University, and the language is for tax purposes. Moreover, I do not find this evidence persuasive as the record shows that graduate assistants do perform duties not required of every degree candidate.

The University next argues that fellowship recipients and trainees must be excluded from any unit. (University's Brief, pg. 79). I agree above with the University with regard to graduate students on fellowship and they are not included in any unit since they are not public employees. With regard to trainees, or graduate students on traineeship, the record in this matter shows that for all relevant purposes they are equivalent to graduate assistants and are therefore included in the unit as public employees.

The University next argues that no proposed unit is appropriate for bargaining under PERA. The University argues:

Even assuming, *arguendo*, that graduate students could properly be characterized as public employees under PERA, any proposed unit nonetheless is inappropriate because it would: (1) result in overfragmentization and contravene the Board's policy to certify broad-based bargaining units; (2) create a unit of graduate students who do not share a community of interest and; (3) cause labor instability which is inconsistent with PERA.

(University's Brief, pg. 91). My analysis of the requirements of Section 604 of PERA based on the facts of this matter is put forth above and I do not find the University's arguments to be persuasive on this issue. With respect to overfragmentization, the language of the proposed unit would not create a fragmented unit as it includes all graduate assistants and graduate students on traineeship who are employees of the University. With respect to members of the unit not sharing a community of interest, I have detailed a clear identifiable community of interest above. Moreover, differences in job duties between, for example, a teaching assistant and a research assistant do not destroy an identifiable community of interest as they merely reflect the division of labor at the University. The record does not support any claims to labor instability and, regardless, such an argument is properly made to the Board in this context.

CONCLUSIONS

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

1. The University is a public employer within the meaning of Section 301(1) of PERA.
2. The Coalition is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.

4. The unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of: all full-time and regular part-time professional employes who are graduate students on graduate assistantship or traineeship and who perform services as teaching assistants, research assistants, or administrative support assistants and excluding graduate students on fellowship, management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

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

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this sixth day of February, 2018.

PENNSYLVANIA LABOR RELATION BOARD

Stephen A. Helmerich, Hearing Examiner

EXHIBIT C

*February 25, 2018 Email from Penn State Regarding Voting Eligibility in
Union Election*

----- Forwarded message -----

From: "Penn State Graduate School" <gradschoolnews@psu.edu>

Date: Feb 25, 2018 12:08 PM

Subject: You are eligible to vote in the election

To: "Michael" [REDACTED]

Cc:

February 25, 2018

Dear Graduate Student,

This email serves as additional notification that you are eligible to vote in the upcoming election to determine if graduate assistants and trainees at Penn State wish to be represented by the Coalition of Graduate Employees (CGE)/Pennsylvania State Education Association (PSEA)/National Education Association (NEA).

In advance of the election, the Pennsylvania Labor Relations Board (PLRB) has issued a subpoena to the University for a list of the names, home addresses and University email addresses of eligible graduate students. The University is following the PLRB process in complying with the subpoena.

The University takes student privacy rights very seriously. You should have received an email from Penn State notifying you of your rights under the Family Educational Rights and Privacy Act (FERPA). Please read that notice carefully. If you have not received a notice, please be sure to check your spam folder or other email filter.

An election date has not yet been set. More information and details about the election will be made available at gradfacts.psu.edu and on the Graduate School's [Facebook](#) and [Twitter](#) channels.

All eligible graduate students are encouraged to vote and make their voices heard when the election occurs. Remember, a simple majority, no matter how

small, of those who actually vote, will determine the result for ALL graduate students in the bargaining unit — even those who don't vote.

If you have any questions, please contact gradinfo@psu.edu.

The Graduate School at Penn State

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You are receiving this email because of your connection to graduate education at Penn State

Our mailing address is:

The Graduate School at Penn State
211 Kern Graduate Building
University Park, Pa 16802

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**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD**

IN THE MATTER OF THE
EMPLOYEES OF
THE PENNSYLVANIA STATE
UNIVERSITY

Case No. PERA-R-17-40-E

PROOF OF SERVICE

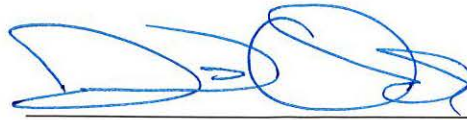
The undersigned hereby certifies that copies of the foregoing Motion to Intervene or Participate and Advance Request for Review and Stay, related exhibits, Verification, and Affidavit of Interest were served this day upon the following counsel of record for the above-captioned matter via first class mail:

Joseph F. Canamucio, Esq.
Pennsylvania State Education Association
400 North Third Street
P.O. Box 2225
Harrisburg, PA 17105-2225
Counsel for Coalition of Graduate Employees, PSEA/NEA

Shannon D. Farmer, Esq.
Meredith C. Swartz, Esq.
BALLARD SPAHR, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Counsel for the Pennsylvania State University

Stephen A. Helmerich, Esq.
Hearing Examiner
Pennsylvania Labor Relations Board
651 Boas Street, Room 418
Harrisburg, PA 17121

Dated: March 23, 2018



David R. Osborne
Pa. Attorney I.D. No. 318024
E-mail: david@fairnesscenter.org
THE FAIRNESS CENTER
500 North Third Street, Floor 2
Harrisburg, Pennsylvania 17101
Phone: 844.293.1001
Facsimile: 717.307.3424

Counsel for Mr. Cronin