

VERMONT LABOR RELATIONS BOARD

UNITED AUTO WORKERS,	)	
LOCAL 2322	)	
	)	
AND	)	DOCKET NO. 23-43
	)	
THE UNIVERSITY OF VERMONT	)	

FINDINGS OF FACT, OPINION, AND ORDER

The United Auto Workers, Local 2322, (“UAW” “Union”), filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board (“Board”), seeking to become the exclusive bargaining representative of the following proposed bargaining unit employed by the University of Vermont (“University” “UVM” “Employer”):

All full-time and regular part-time graduate teaching assistants, graduate research assistants, graduate assistants, pre-doctoral trainees, pre-doctoral trainees/fellows, and all other graduate students in other titles who are employed in an academic position.

On November 8, 2023, the University filed its objections to the proposed unit asserting primarily that all of the petitioned individuals are students and do not qualify as employees under the State Employees Labor Relations Act (“SELRA”), 3 V.S.A. § 901, 902. The University also argued that if the Board were to find the members of the proposed unit were employees, the Board should not exercise its jurisdiction over them because doing so would be inconsistent with the spirit and intent of SELRA, 3 V.S.A. § 902 (5)(J), and could potentially entangle the Board into graduate education and academic matters at the University. Finally, the University argued that if the Board exercised jurisdiction over the petition, the pre-doctoral trainees/fellows should be excluded from the proposed unit.

The parties agreed to consolidate and hold hearings on the jurisdictional and unit determination issues together. The parties jointly agreed on the dates for the hearing, held on

January 19, 22, and February 5, 2024, before the following Board Members, David Boulanger, Acting Chair, Robert Greemore, and Alan Willard. The first day of hearing was held in the hearing room at 6 Baldwin Street, Montpelier, with Mr. Greemore participating remotely through Microsoft Teams. The second day was a hybrid hearing with counsel for the Union appearing remotely, and its witnesses appearing in person. Finally, the last hearing day was remote with both Union and University counsel appearing remotely, and the Union witness appearing remotely. The Union was represented by James A.W. Shaw, Esq., and Kyle Berner, Esq., of Segal, Roitman LLP, and the University was represented by Nicholas DiGiovanni, Esq., of Morgan, Brown & Joy. The parties filed post-hearing briefs on February 12, 2024. UVM Associate General Counsel, Meghan Siket, Esq, joined on the brief for the University.

#### FINDINGS OF FACT

1. The University contains the following ten schools and colleges: the College of Agriculture and Life Sciences; College of Arts and Sciences; Grossman School of Business; College of Education and Social Services; College of Engineering and Mathematical Sciences; Rubinstein School of Environmental and Natural Resources; the Graduate College; Larner College of Medicine; College of Nursing and Health Sciences and the Honors College.
2. Each school or college is headed by a dean who reports to the Provost and Senior Vice President, Doctor Patricia Prelock. Dr. Prelock is the chief academic officer of the University. Employer Exhibit 1.
3. Dr. Holger Hooch is the Dean of the Graduate College, a position he has held since August of 2023. Prior to coming to the University, Dr. Hooch was the Associate Dean for Graduate Studies and Research, Arts and Sciences at the University of Pittsburgh. Before

that, he held tenured faculty and postdoctoral positions in universities in the United Kingdom.

4. Dr. Linda Schadler is the Dean of the College of Engineering and Mathematical Sciences. She has held the position of Dean for over five years. Prior to that, she worked for 22 years at Rensselaer Polytechnic Institute working in her specialty of polymer composites and materials science. Dean Schadler serves, and has served, as a Principal Investigator on federally funded research and has been the primary advisor to many Master's and Doctoral students over the course of her career, including at the University of Vermont. She received her doctorate in materials science and engineering from the University of Pennsylvania.
5. The University currently offers approximately 26 Ph.D. programs and about 56 master's programs of various types. Employer Exhibit 2.
6. Approximately 1,700 graduate students pursue their graduate studies at the University of Vermont. Approximately one-third of the graduate students at UVM are pursuing Ph.D. degrees and roughly two thirds are pursuing master's degrees. Serving as a graduate assistant is not an academic requirement for obtaining a graduate degree from UVM.
7. Not all graduate student degree programs have a teaching requirement, although there is a teaching requirement for graduate students in Ph.D. programs.
8. Normally, the time frame for a student to achieve their doctoral degree is 4-5 years, although some take longer. The time frame for a master's degree is usually two years, although some accelerated master's programs can be completed in one year. In all cases, the length of time to complete the degree depends on the program's requirements for

graduation and the pace of the progress of the student to complete their academic requirements and dissertation or thesis.

9. Approximately 10-15% will leave after a year of study in doctoral programs either voluntarily or for academic reasons. The rate is higher for master's programs where approximately 20% do not return.
10. The Petition seeks to form a unit composed of "all full-time and regular part-time graduate teaching assistants, graduate research assistants, graduate assistants, pre-doctoral trainees, pre-doctoral trainees/fellow, and all other graduate students in other titles who are employed in an academic position."
11. Of the 1700 graduate students pursuing graduate studies at UVM, approximately 627 of them hold positions in the proposed bargaining unit. Based on fall 2023 numbers, the breakdown is as follows:

114 Graduate Teaching Assistants ["GTA"]

151 Graduate Research Assistants ["GRA"]

267 Graduate Teaching/Research Assistants ["GTA/GRA"]

21 Graduate Assistant/Teaching Assistant [GA/TA]

17 Graduate Advisors

57 Predoctoral Fellows/Trainees

Employer Exhibit 18.

Collectively, the Board adopts the phrase "assistantship" to describe the group.

12. Graduate students are not required to hold an assistantship as part of their graduate academic program.
13. Graduate students without an assistantship may choose to fund their own education.

Graduate Dean Holger Hoock referred to such students as “self-funded,” meaning they pay their own tuition and fees and do not work as a graduate assistant. The majority of students pursuing graduate degrees are self-funded.

14. The Graduate College oversees the assistantships. The Graduate College reviews and approves appointment contracts between UVM and graduate assistants, ensures that they receive employer-provided healthcare, sets minimum stipend amounts, and training.
15. For the current fiscal year, FY 24, Graduate Research Assistants, Graduate Teaching Assistants, and Fellowships, receive a minimum stipend of \$32,000 for a 12-month appointment (or \$24,000 for assistantships on a nine-month appointments). Individual programs are free to offer higher than minimum stipend levels.
16. Graduate Assistantships are different from a scholarship or grant award because the graduate assistant provides a service for the benefit of the University. In exchange for this service, the Graduate Assistant receives compensation in the form of a stipend.
17. The Graduate Assistants perform the work assigned to them by a supervisor.
18. The University sends an “Appointment Letter” to those graduate students to whom it is offering a graduate assistantship. The letter details the stipend amount, expected hours of work or effort dedicated to the assistantship, job duties, and performance expectations. Employer Exhibits 14-17.
19. The graduate assistantship Appointment Letter separates and distinguishes between work to be performed by the graduate student in pursuit of their academic degree and their work performed to fulfill their assistantship duties.

A full-time Graduate Assistantship (GTA/GRA/GA) carries with it the expectation of 20 hours effort/week in addition to effort required for your coursework and research credits. Without explicit permission from the Dean of the Graduate College, as a funded student you may not take on

additional UVM employment that would result in your working more than an average of 20 hours compensated effort per week during your assistantship.

. . . .

Students must be enrolled in at least 9 credits each semester they are employed as a full-time GTA/GRA/GA (20 hrs/wk effort), or 5 hours if a half-time GTA/GRA/GA (10 hrs/wk effort).

Employer Exhibit 15.

20. Graduate assistants may also be required to engage in other services for the University including, participation “in college or university events, including but not limited to, Admitted Student Visit Days, research fairs, orientation events, open houses or recruitment trips.” Employer Exhibit 15.
21. The duration of the support for assistantships is intended to extend for the duration of their graduate education. The Appointment Letters specify that the support for graduate assistants is intended to extend “up to a total of four years while you complete your doctoral degree.” Employer Exhibit 15. Other letters may include
22. Graduate assistants can be assigned to an assistantship position and required to provide twenty hours of effort for the University before they have finalized or developed the focus of their dissertation.
23. Even when a dissertation topic has been selected the graduate assistant may be assigned work not related to advancing their dissertation topic. A graduate assistantship can be assigned to an assistantship in an area or focus that is separate and distinct from the focus of their graduate academic studies.
24. The graduate assistantship Appointment Letter also details other terms of employment including holidays, time off, and remote work.

25. For the twenty hours of work or “effort” the graduate assistant receives a stipend.
26. Graduate assistantships are regulated as employment under federal immigration laws, and under federal and state tax laws.
27. The graduate assistantship stipend is awarded as a paycheck on a semi-monthly basis.  
Employer Exhibit 15.
28. Excluding Pre-Doctoral Fellows/Trainees, the University reports graduate assistants’ stipends as wages on W-2s. All graduate assistants, including Fellows/trainees, are required to pay income taxes on their compensation or stipend.
29. Graduate assistants may be corrected or disciplined if the work for which they are compensated does not meet performance expectations. A graduate assistant can be terminated from their compensated position without suffering expulsion or removal from their academic program.

While your [appointment letter] indicates the length of your assignment, a lack of substantial performance in the position could lead to termination prior to the listed end date. If your performance is judged inadequate by the advisor, department or program, you will be informed of the deficiencies and provided with a chance to respond and reasonable time, opportunity, and support to improve performance, prior to termination of funding.

Union Exhibit A.

30. The Appointment Letter provides that the assistant must monitor their twenty hours of effort. The University does not track the 20-hour extra effort expectation by a time clock or other means. Dean Hooch testified that this expectation relies on the faculty to calibrate the work assignments to ensure an average of 20 hours of compensated effort.
31. The program or faculty advisor, or principal investigator assigned to the graduate student to assist, guide, and mentor them through their academic studies is not always and does

not have to be the supervisor assigned to monitor or supervise their assistantship or fellowship positions.

Graduate Assistants are employed by UVM

32. Although careful during the hearing not to refer to graduate assistants as employees, University publications and documents created to provide information to graduate students about their rights and obligations refer to them as employees.
33. The Biology Graduate Student Handbook for new graduate students, including graduate assistants, describes the following when answering the question how to get details about salary and benefits:

First, review your contract letter, which contains important details about your salary benefits as a graduate student. **As a UVM employee, your benefit and salary details are managed by the PeopleSoft software package.**

Union Exhibit Q (emphasis added).

34. The University describes the duties of the biology teaching assistant as follows:

As a minimum, your responsibilities are to prepare for your lab teaching each week, to show up and teach the lab for the full scheduled time, to post and be available for regular office hours to your students, to promptly complete the grading of lab exercises and return graded assignments to students, to attend weekly lab and organizational meetings, and to maintain safety procedures and follow protocols during your teaching. In addition depending on the course you are teaching, there may be additional requirements of prepping and setting up. All of these important **GTA duties are for the undergraduate student benefit and your own professional development; this should not be taken lightly. As a graduate student in the classroom, you have the satisfaction of knowing that you are making a difference in their undergraduate careers!**

Union Exhibit Q (emphasis added).



35. Graduate teaching assistants are required to be “on contract” meaning that they are required to respond to all business-related emails and other forms of communication, as well as to be available for all business-related events.” Union Exhibit O.
36. Graduate Assistants are paid their stipend through the UVM payroll system, PeopleSoft. Graduate Assistants, like other workers compensated for their services, must access the “UVM Employee” pull down menu to access the payroll system. Union Exhibits E, N.
37. The “extra effort” as described by the University is work for which the graduate assistant is compensated. The UVM Guidelines for Funded Graduate Students govern graduate student positions. The Guidelines outline the work-based positions of graduate assistants and provides that “[s]tudents receiving a full stipend devote, on average, .50 FTE effort (20 hours per week) to their teaching, research, or training duties during the term of their appointment. The workload may vary.” Union Exhibit K. The Guidelines also outline the holiday, sick leave, and time off policy for assistants.
38. Graduate Assistants “may not work at UVM for more than a total of 20 hours per week on average.” Exhibit M. There are certain exceptions and assistantships can seek to work more than twenty hours but must complete an “Additional Work Application.” “Please note that this application only needs to be completed if an additional work assignment would put you over 20 hours per week. If your appointment is less than full-time and a new position would put you at or below 20 hours per week you do not need to complete this application.” Union Exhibit M.
39. The UVM Graduate Students’ Frequently Asked Questions, Union Exhibit L, contains questions and responses generated by UVM including questions related to graduate assistantships. The information provides that “[c]ompensation for teaching, research,

and/or other activities performed for the benefit of the University are also subject to income tax withholding and reporting.” Union Exhibit L.

40. The University advises graduate students that

Graduate students who are receiving any compensation for UVM employment must, under immigration law, complete an Employment Eligibility Form known as ‘I-9’ before the end of their first day of employment. This requirement applies to graduate assistantships of all types.

Union Exhibit L.

41. The University withholds federal and state taxes from stipends awarded to graduate assistants but not for pre-doctoral trainees.

42. The Frequently Asked Questions expressly states that “[g]raduate and teaching assistants **are UVM employees when they are performing job duties associated with their assistantships- - but not when they are engaged in academic study.**” Union Exhibit L.

43. Graduate Assistants are also advised to take special note of certain “policies applicable to UVM employees” including the “Alcohol Policy – Faculty and Staff; DrugFree Workplace; Amorous Relationships with Students; Computer, Communication, and Network Technology Acceptable Use; Copyright; Intellectual Property; Data Breach Notification; Discrimination and Harassment; Equal Employment Opportunity/Affirmative Action Policy Statement; FERPA Rights Disclosure; Laboratory Health and Safety; Minors in Laboratories; Misconduct in Research and other Scholarly Activity; and Sexual Harassment and Misconduct.” Union Exhibit L.

44. The Graduate Assistant Supervisor can terminate the graduate assistant “for inadequate performance of specific duties associated with the assistantship as determined and

documented by your employment supervisor (e.g., laboratory director, department chair, or research advisor).” Union Exhibit L.

Examples of Graduate Assistant duties and responsibilities

45. Bailey Kretzler (Plant and Soil Science), Lillian Russo-Savage (Neuroscience), Calum Buchanan (Mathematics), and Baxter Worthing (Plant Biology), testified about their experiences in various assistantships.
46. The time and attention graduate assistants devote to fulfilling their appointments can impede their dissertation research. The time spent grading papers, proctoring exams, orienting and training new students, maintaining office hours, and performing administrative functions may diminish the focus and attention of the assistant on their dissertation efforts.
47. Some graduate students arrive at UVM knowing or seeking out a particular advisor, while others may take one or more years to find a faculty advisor for their doctoral dissertation.
48. Baxter Worthing, a Ph.D. student in the Plant Biology Department of the College of Arts and Sciences has been enrolled continuously as a graduate student at UVM since the fall 2018. He studies poplar trees and their ecological and economic benefits. Before enrolling at UVM, Mr. Worthing obtained a master’s degree from Clark University in 2017. In the year between receiving his master’s and starting his Ph.D. studies at UVM, Mr. Worthing worked as a lab technician for a biotech company in Boston.
49. When he first started his Ph.D. program, he did not have a faculty advisor. He did two rotations in labs before being connected with a faculty advisor.

50. During his first year, 2018-2019, Mr. Worthing was a pre-doctoral trainee through the Quantitative and Evolutionary STEM Training (“QuEST”) program. As part of the program, he was required to complete an internship outside of academia, participate in training, and professional development seminars. The professional development seminars involved providing feedback on the utility of professional development seminars. To continue to receive the fellowship, he had to adhere to the specific requirements of the QuEST program.

51. In the following years, Mr. Worthing served in the following assistantship roles:

2019-2020- Fall 2019, teaching assistant for a genetics class, part of the undergraduate biology core curriculum, in a different academic department than his doctoral program. He was supervised by the class instructor, not his faculty advisor. He was required to attend all lectures, answer student questions during lectures, teach weekly recitation classes, grade exams, maintain office hours, and present review sessions. Spring 2020, teaching assistant in ecology, supervised by the teacher of the class, not his academic advisor. His duties were similar, recitation session twice per week, maintaining office hours, grading undergraduate student work, and supporting the teacher of record. He was required to work twenty hours per week and the work was not related to and did not advance his doctoral dissertation.

2020-2021. Trainee under the QuEST program again because it was the compensation vehicle offered to him. In this position, he worked on an applied internship program at the Oakridge National Lab for the U.S. Department of Energy. He received paychecks from UVM during the internship. He received a

W-2 for the year he was a QuEST trainee.

2021-2022, Mr. Worthing was a graduate research assistant, working with his faculty advisor. The work was in the same general field, but not directly related to Mr. Worthing's research for his doctoral degree. His advisor had a series of deliverables to fulfill for the grant that he assigned or delegated to Mr. Worthing. The advisor supervised Mr. Worthing to ensure that he fulfilled his deliverables. Mr. Worthing also had to produce deliverables for other faculty working on the grant and they also offered feedback and supervision on his work.

2022-23. Two more semesters as a graduate teaching assistant because there was no availability of funds for his faculty advisor's research project. Mr. Worthing taught genetics again with similar duties to the first time he taught the class.

52. Bailey Kretzler, a Ph.D. student in the Department of Plant and Soil Science has been enrolled continuously as a graduate student at UVM since 2020. She studies plant soil microbe interactions in diversified agricultural systems, focusing on the plant soil microbes in the three-system polyculture of corn, bean, and squash. She received her Master of Science Degree at Lancaster University in the United Kingdom before starting her doctoral program at UVM. She was admitted with three years of guaranteed funding. She started her doctoral program in 2020 and during her first was a pre-doctoral trainee through the National Science Foundation ("NSF") QuEST program. The traineeship provides a higher stipend level than the minimum stipend level for assistantships at UVM. She received tuition reimbursement and health insurance, like graduate assistants. She was required to take training, complete an internship in a field outside academia, interact with different disciplines, and participate in professional development. She was

expected to work twenty hours on the traineeship. She had to adhere to the specific requirements of the QuEST program to receive the funding. She was supervised by her advisor and also program related faculty assisted in ensuring compliance with the QuEST program.

53. Ms. Kretzler is in the middle of her fourth year and anticipates she will obtain her Ph.D. in 2025. In the years following her QuEST fellowship she held the following positions:

2021-22- Ms. Kretzler was a graduate teaching assistant supporting the fundamentals of soil science course offered to undergraduate students. The teacher of record was not her academic advisor for her graduate program. She prepared for and led the lab sections, teaching the basics of soil composition, digging test pits, and testing soil samples. She graded student's work, maintained office hours, and supported and was supervised by the class instructor. The class instructor directed her on the subjects to be covered in the lab. Ms. Kretzler taught the lab, graded lab work, on-line discussion board posts, and larger assignments. She was also required to maintain office hours and supported the class instructor. She was expected to devote twenty hours a week to the assistantship.

In the Spring of 2022, Baily was a teaching assistant for two on-line classes, permaculture, and home gardening, taught by someone other than her faculty advisor. She was assigned to the class based on her experience and expertise. As a teaching assistant she prepared and graded quizzes and supported the students in the class. She was required to work twenty hours a week and received a paycheck from UVM. Her work as a GTA has not advanced or led to progress in her

graduate work. She taught principles and classes she already knew.

In the fall of 2022, she became a GRA in a USDA natural resource conservation service conservation innovation grant examining the impact of management practices on livestock farms in Vermont. She helped administer the ecological component of the study, by coordinating ecological data collection and outreach with Vermont farms. She had weekly meetings with her advisors or others on the direction of her work. The assignment was not in her control, her advisor told her there was funding available on one of his projects. The research and data she developed was not usable for her dissertation.

2023-2024, Ms. Kretzler holds an internal fellowship with UVM. She is supervised by her academic advisor. She receives compensation for the fellowship that she accesses through the Peoplesoft payment portal.

54. Lillian Russo-Savage has been enrolled in the neuroscience graduate program since fall of 2021. She graduated from Trinity College with a Bachelor of Science in May 2018 in neuroscience and psychology. After graduating she worked as a lab technician at the University of Connecticut Health Center and University of Virginia where she ran experiments and published data and contributed to publications. Her dissertation topic examines the effects of specific bacteria in gut biome on the function of the brain and how they may relate to anxiety disorders.

55. Ms. Russo-Savage has held the following positions while pursuing her doctoral degree:

2021-2022- Ms. Russo-Savage worked as a teaching assistant for two years. She was a TA for the introduction to neuroscience laboratory, taught by a faculty

member who was not her academic advisor. She taught three sections of the lab providing a thirty-minute lecture before each lab. She was required to prepare the lab for the arrival of students and grade the students' work. She met with the faculty instructor each week to go over the details of the topics to be covered in the lab and address questions about the class. She also taught neuroanatomy, as part of a three-person team comprised of herself, another TA and the main lecturer, who was not her academic advisor. The lecturer who supervised her was more involved in oversight and interested in discussing and reviewing the methods of teaching and engagement with the neuroanatomy students to ensure they understood the subject. She was responsible for preparing specimens for the students, engaging with the students, and answering questions during the labs. She also prepared them for exams and graded exams. Her teaching assistant positions do not relate to or advance her work for her doctoral dissertation. She is not learning anything new, instead she is facilitating the learning of the undergraduates in her labs. UVM, not Ms. Russo-Savage, selected the courses she would teach as a teaching assistant.

2023-2024, Ms. Russo-Savage serves as the only graduate research assistant in her faculty advisor's lab. Ten people work in the lab, the principal investigator and co-investigator, along with several post-doctoral fellows, lab technicians, and undergraduates. She is supervised in the lab and the work she performs by the principal investigator and co-principal investigator. The work she performs as a research assistant furthers the study goals and work of the principal investigator, the funding source, and UVM, not her or her dissertation topic. She anticipates



and reasonably expects to continue to work as a research assistant for the remainder of her doctoral program

She has had a different funding source for her stipend during all three years but has always received a paycheck and W-2 from UVM for her work as a teaching assistant and research assistant.

56. Calum Buchanan has been enrolled as a graduate student at UVM in the Department of Mathematics and Statistics since the fall of 2019. He received his undergraduate degree in December 2017 from the UVM College of Arts and Sciences, with a double major in English and Mathematics, and a minor in French. He is pursuing a PH.D. in computational mathematics theory, studying networks in an abstract setting, or graph theory.

57. Mr. Buchanan has held the following positions while pursuing his doctoral degree:

Fall 2019-Spring 2022- Mr. Buchanan worked as a teaching assistant during his first three years, teaching one class per semester. He has taught Fundamentals of Calculus I and Exploring Modern Mathematics to undergraduate students.

Mathematics majors do not take these classes. As a TA he was supervised by a course coordinator, not his academic advisor. The coordinator dealt with issues of pedagogy, maintaining oversight of the topics to be covered, and requirements on exam preparation. Mr. Buchanan was the primary teacher of the class, preparing and presenting lectures, writing, and grading exams and quizzes, and offering two hours of introductory math help sessions. He was required to work twenty hours a week in these positions.

Fall 2022-Fall 2023- Mr. Buchanan worked as a graduate research assistant

supervised by an engineer in the electrical engineering department, not his academic advisor. His supervisor received a NASA grant to explore formation flight for autonomous satellite swarms. Mr. Buchanan was assigned to work on the portion of the project addressing communication networks between satellites. Mr. Buchanan's advisor recommended him for the GRA position. The supervisor provides him with concrete discrete assignments or problems that Mr. Buchanan must resolve, the direction and scope of work is directed by the supervisor. The research assistant work Mr. Buchanan performs, writing algorithms and proofs, does not advance his work on the discrete and specific problem addressed by his dissertation. Graduate students pursuing a mathematics degree typically require five to six years to complete the degree. He is confident he will receive a teaching position next year.

#### Pre-doctoral fellowship/trainees

58. Fellowships can have external or internal funding sources. Regarding fellowships awarded from an external source, the student applies for and receives the fellowship from the outside source, like the National Science Foundation. The fellowship award is made to the individual student, they carry that funding with them, the money flows through the university and is distributed to the student by the University.
59. Pre-doctoral Fellows may be required to engage in teaching or research. The research or training required is tied to the goals or aims of the Fellowship they have been awarded or the training grant that supports them. Students may have additional requirements beyond those described or required for their graduate program. Employer Exhibit 13. Summer

enrollment and research may also be a separate and additional requirement of the Fellowship. Employer Exhibit 17. Fellows may not be engaged in additional compensated effort at UVM without receiving prior approval from the Graduate College.

Id.

60. Students are appointed as Predoctoral Trainees when their stipend is paid from a training grant awarded to the institution as opposed to the individual student, such as a National Institutes of Health or National Science Foundation training grant awarded to the University. Typically, these grants describe a specific training program that the appointed trainees must complete.

61. Fellows and trainees are prohibited from engaging in additional compensated effort at UVM without permission from the Graduate College. Employer Exhibit 17.

#### MAJORITY OPINION

The University first objects to the Petition because it argues the members of the proposed bargaining unit are not employees under the State Employees Labor Relations Act (“SELRA”), 3 V.S.A. §§ 901, 902. The University also claims that even if the members of the proposed unit are employees under the definition of SELRA, the Board should not assert jurisdiction over them because their position “is so inconsistent with the spirit and intent” of SELRA “as to warrant exclusion.” 3 V.S.A. § 902 (5) (J). The University contends that by asserting jurisdiction over the graduate students the Board will be wading in the waters of academic matters and graduate education policy. The University also challenges the appropriateness of the bargaining unit and asserts that even if the Board asserts jurisdiction over the unit, the proposed unit should be limited to those graduate student assistants who are at least in their third semester of work as an

assistant. Finally, the University argues that if the Board exercised jurisdiction over the petition, the pre-doctoral trainees/fellows should be excluded from the proposed unit.

Whether the Board has jurisdiction over the proposed unit under SELRA?

The case is one of first impression for the Board. To resolve the jurisdictional issue, the Board first examines the applicable statute, 3 V.S.A. 901-1008. SELRA affords “employees” the following rights:

[T]he right to self-organization; to form, join , or assist employee organizations; to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except as provided in subsections (b) and (c) of this section, and to appeal grievances as provided in this chapter.

3. V.S.A. 903 (a).

The University claims the graduate assistants are not employees under SELRA.

The question is whether the assistants are employees under the statute. The statute defines “employee” as a “State employee” that meets the definition of section 902 (5), which provides as follows:

“State employee” means any individual employed on a permanent or limited status basis by the state of Vermont, the Vermont State Colleges, the University of Vermont, the State’s Attorneys’ offices, or as a full-time deputy sheriff paid by the State pursuant to 24 V.S.A. § 290 (b), including part-time employees, and an individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, but excluding and individual:

[subparagraphs (A) – (I) enumerated list of individuals excluded under the statute]

....

(J) determined after hearing by the Board, upon petition of any individual desiring exclusion, of the employer, or of a collective bargaining unit, to be in a position that is so inconsistent with the spirit and intent of the chapter to warrant exclusion.

3 V.S.A. § 902 (5).

The University argues the graduate assistants should be excluded because the statute does not specifically include them. The statute does not specifically include secretaries, faculty, custodians, clerks, or other positions of workers employed by the University or State. Instead, the Legislature chose only to enumerate those categories of workers or types of positions that should be excluded from the statute. The Legislature chose not to exclude graduate assistants when amending the statute over a dozen times since its passage in 1969. Graduate students or assistants or pre-doctoral fellows or trainees are not specifically excluded under SELRA.

The University claims that the Legislature did not have graduate students in mind when it enacted SELRA. That might be the case, although the University does not offer any legislative history to support its position. Even if this were true, however, the selection of the term “individual” as the holder of the rights to be covered by the statute demonstrates that the Legislature intended not to limit the legislation to those employees it could list at the time of drafting. The use of the term “individual” allows for the statute to cover employees not contemplated but nevertheless covered by the statute.

The statutory language is broad and defines employee to include “any individual employed on a permanent or limited status basis.” Although “employed” is not defined, the dictionary definition includes “to provide work to someone for pay.” Heritage Dictionary (5<sup>th</sup> ed. 2022). The United States Supreme Court, also referencing the dictionary, provides the following definitions of “employee” in NLRB v. Town and Country, Electric, 516, U.S. 85 (1995):

The ordinary dictionary definition of employee includes “any person who works for another in return for financial or other compensation.” Heritage Dictionary

604 (3d ed. 1992). See also Black's Law Dictionary 525 (6th ed. 1990) (an employee is a 'person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed').

The graduate assistants provide work or effort to the University in exchange for a stipend or payment. The graduate assistants teach undergraduate students, contribute to the success of those students, grade papers and exams, perform administrative tasks, provide orientations and other onboarding tasks. In exchange for their efforts, the University compensates or pays them a stipend. The University prohibits their ability to earn additional compensation from the University while they work as graduate assistants. The assistants are compensated by and receive a paycheck from the University for their assistantships.

Assistants serving as research assistants similarly perform a service or work and receive compensation in return. As Baxter Worthing explains, he is responsible for providing deliverables to his faculty advisor and other faculty servicing the grant funded research project. The deliverables are not directly related to his dissertation on poplar trees. The data and research gathered by Ms. Kretzler in her research assistant position will not further or be used in her work on the plant soil microbes in the three-system polyculture of corn, bean, and squash.

The assistants testified that they are supervised in their assistantships and are required to perform tasks that serve undergraduates, UVM, a principal investigator, and outside faculty and programs. Mr. Buchanan must confer with his course coordinator about the direction of the mathematics classes he teaches. The assistants can be terminated from their compensated positions for poor job performance.

The Legislature was clear in its attempt to cast a wide net in selecting the term "individual" as the starting point for persons to be included under SELRA. The assistants are

employees as that term is used in SELRA. They are “individuals” employed by the University of Vermont and fall within the jurisdiction of the Board.

The University admits through its own documents that the proposed unit members are employees. The University has declared that “[g]raduate and teaching assistants are UVM employees when they are performing job duties associated with their assistantships - - but not when they are engaged in academic study.” Union Exhibit L. Their compensation is distributed using the same payroll system as other UVM employees. “As a UVM employee, your benefit and salary details are managed by the PeopleSoft Software package.” Union Exhibit Q. Graduate assistants are required to serve administrative tasks that serve the University through recruitment and orientation. While serving as teaching assistants, the focus of their duties is “for the benefit of the undergraduate student” and they should glean satisfaction as an assistant by “knowing that you are making a difference in their [undergraduate’s] careers!”

The University appears to concede that, except for paragraph (e) (J), nothing in SELRA excludes assistants from the definition of “employee” or “state employee.” Reference to other state statutes can offer no guidance on how the Board should apply the Vermont statute.

#### Whether Assistants are temporary employees?

The University next argues that if the assistants are employees, they should be excluded because they are temporary employees. Approximately 10-15% will leave after a year of study in doctoral programs either voluntarily or for academic reasons. The rate is higher for master’s programs where approximately 20% do not return.

The University is correct that SELRA does not extend to temporary employees. See 3 V.S.A. §902 (5). The Board has previously defined limited status employees as those that have a reasonable expectation of employment for at least a limited time period and have more than

just a tenuous employment relationship. VSCFF and Vermont State Colleges, 10 VLRB 39, 47 (1987), aff'd in pertinent part, 152 Vt. 343, 348 (1989) . The Board has used that definition to determine that adjunct faculty contracted for one semester only do not have a reasonable expectation of continued employment. Because of the tenuous nature of their employment, the Board developed a standard by which to evaluate whether an adjunct teacher is a temporary or limited status employee. The Board adopted a three semester test.

The University urges the Board to apply a similar test to limit the proposed bargaining unit to those graduate assistants in their third semester of work for the University. The Board need not impose such a condition here, because unlike the adjunct faculty members at Vermont State Colleges, the graduate assistants “have a reasonable expectation of continued employment for at least a limited time period and have more than just a tenuous relationship.” Vermont State Colleges, 10 VLRB at 47.

The University represents to teaching assistants in the Appointment Letters that “[i]t is our intention to provide support for up to four [or five] years while you complete your doctoral degree.” The Graduate Dean acknowledged that to remain competitive, UVM must provide students with a reasonable expectation of continued employment throughout their graduate studies. The term of service for the graduate assistants who testified was as long as six years. They testified that they have been able to receive assistantships beyond the original period outlined in the Appointment Letter. The University has a commitment to ensuring graduate assistants have work to support them throughout their doctoral programs. The graduate assistants have a reasonable expectation of continued employment and qualify, at a minimum, as limited status workers.



3 V.S.A. §902 (5)(J) claim

The University next argues that the Board must exclude the assistants because graduate assistants are primarily students, and the University is charged with providing academic support to them which necessitates a finding that the graduate assistant positions are so inconsistent with the spirit and intent of this chapter as to warrant exclusion. See 3 V.S.A. § 902 (5) (J). In support of its position, the University relies on the shifting sands of NLRB precedent to argue that because the primary relationship is academic and not economic, collective bargaining and the other rights and duties SELRA offers do not belong in academia and will ultimately “prove detrimental to both labor and educational policies.” (Post-hearing brief of the University, at 58).

There is nothing in SELRA that limits or prescribes that an employee cannot have a dual or concurrent role. The Board lacks the authority to exclude from the statute and SELRA protection those classes of workers the Legislature has not selected to exclude. “A considerable amount of evidence must be advanced to exempt an employee from inclusion in a bargaining unit.” VFT, AFT, AFL-CIO and Vermont State Colleges, 8 VLRB at 20-21 (1985).

The Board has limited its application of the 902 (5)(J) exclusion to situations creating “an irreconcilable conflict of interest between [the proposed unit employees] obligations to a union and to their employer.” United Professions of Vermont/AFT and Vermont State Colleges, 25 VLRB 1, 60 (2002) (citing VFT, AFT, AFL-CIO and Vermont State Colleges, 8 VLRB 6, 20-21 (1985)). Nothing in the record or briefing persuades the Board to expand the application of the exclusion to graduate assistants.

The University has demonstrated its ability to keep separate and distinct the dual roles of the assistants. In several publications designed to provide information to new graduate students, the University effectively communicates that the twenty hours of effort or work that graduate

assistants are expected to fulfill is separate from or in addition to the hours dedicated to their academic program. The University expressly defines this distinction in its Frequently Asked Questions. “Graduate and teaching assistants **are UVM employees when they are performing job duties associated with their assistantships- - but not when they are engaged in academic study.**” Union Exhibit L

Refusing to expand the scope of the exclusion beyond the conflict-of-interest situation is consistent with the Board’s overall role in unit determination proceedings and the precedent of our sister states. “The Board shall decide the unit appropriate for the purpose of collective bargaining in each case and those employees to be included therein, in order to assure the employees the fullest freedom in exercising the rights guaranteed by this chapter.” 3 V.S.A. § 927. We see no reason to exclude the assistants and impede their freedom to exercise the collective bargaining rights guaranteed by SELRA.

#### Appropriateness of the bargaining unit

In addition to seeking exclusion of graduate assistants that have served less than three semesters, the University also seeks to exclude pre-doctoral trainees and pre-doctoral trainees/fellows. The Board must determine whether the proposed unit is an appropriate unit. See 3 V.S.A. 927 (c); In re Vermont State Colleges Fac. Fed’n, AFT Loc. 3180, 2019 VT 50, ¶¶ 24, 210 Vt. 476, 485–86 (2019). “[T]he bargaining unit approved by the Board, need not be the most appropriate unit” but rather “an appropriate unit.” See Petition of VSEA, Inc., 143 Vt. 636, 642–43, 471 A.2d 230, 234 (1983).

There is a similarity of interests, needs, and general conditions of employment of the employees in the proposed bargaining unit. They provide a service, work, or effort, for which

they are compensated or paid by the University and are supervised monitored in performance of such efforts. 3 V.S.A. §941 (f)(2).

The Board finds that the following is an appropriate bargaining unit:

All full-time and regular part-time graduate teaching assistants, graduate research assistants, graduate assistants, and pre-doctoral trainees, pre-doctoral trainees/fellows, and all other graduate students in other titles employed in an academic position.

DISSENTING OPINION

With all due respect, I disagree with the opinion of the majority on the application of the exclusion provision of Section 902 (5) (J).

The positions in the proposed bargaining are so inconsistent with the spirit and intent of the State Employees Labor Relations Act as to warrant exclusion. 902(5)(J). All of the positions in the proposed bargaining unit are students and must remain as students to continue to receive stipends and fellowships. The services the graduate assistants or fellows provide are in the context of their role as students.

The relationship between the graduate assistants and UVM is primarily that of student-teacher, with an educational rather than economic focus. The positions are fully integrated into their academic programs. The rights and obligations that attach through SELRA are not compatible with the overarching educational relationship between the University and students.

/s/ Alan Willard

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Alan Willard

ORDER

Based on the foregoing facts and reasoning, it is ordered:

The Vermont Labor Relations Board shall conduct a secret ballot election, pursuant to 3 V.S.A. §941 (g) among employees in the proposed bargaining unit to determine: (1) whether they wish to be organized into the bargaining unit; and 2) whether they wish to be represented for exclusive bargaining purposes by the United Auto Workers.

Dated this 20<sup>th</sup> day of February December 2024, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ David Boulanger

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David Boulanger, Acting Chair

/s/ Robert Greemore

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Robert Greemore