

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION

SERVICE EMPLOYEES	:	
INTERNATIONAL UNION (SEIU),	:	
FLORIDA PUBLIC SERVICES	:	
UNION (FPSU), CHANGE TO	:	
WIN (CTW),	:	
Petitioner,	:	Case No. RC-2017-007
v.	:	<u>HEARING OFFICER'S</u>
UNIVERSITY OF SOUTH FLORIDA	:	<u>RECOMMENDED ORDER</u>
BOARD OF TRUSTEES,	:	
Respondent.	:	

Dustin Watkins and D. Marcus Braswell Jr., Coral Gables, attorneys for Petitioner.

John F. Dickinson and Daniel P. Murphy, Jacksonville, and Gerard D. Solis, Tampa, attorneys for Respondent.

VAN WHITTLE, Hearing Officer.

On April 20, 2017, the Service Employees International Union (SEIU), Florida Public Services Union (FPSU), Change To Win (CTW), (hereinafter the Union) filed a representation-certification petition seeking to become the bargaining agent for a unit of part-time non-tenure-track faculty members (adjuncts) employed by the University of South Florida Board of Trustees (Board). On April 26, the Commission found the petition sufficient and subsequently appointed the undersigned hearing officer so that an evidentiary hearing could be conducted.

On May 10, the Board filed its answer to the representation-certification petition, challenging the following: (1) whether a unit that included adjunct, non-tenured faculty is

appropriate; (2) whether the employees in the unit had a reasonable expectation of continued employment; (3) whether the job classifications identified in the petition lacked a community of interest; and (4) whether the showing of interest was sufficient. On June 1, the Board filed a motion for administrative review of the showing of interest. I issued an order to show cause, directing the Union to respond to the allegations raised in the motion. The Union, in response, challenged the list provided by the Board and asserted that the list included numerous people who were inappropriately included.

On June 13, after due notice, a telephone hearing was conducted between Tallahassee and Tampa pertaining solely to whether the proposed unit was appropriate. All parties were afforded the opportunity to call witnesses, cross-examine witnesses, and fully participate. The Union filed twenty-two exhibits in support of the petition, and the Board filed fifty-eight exhibits to support its position. The rule of sequestration was not invoked.

While the parties presented all of their evidence pertaining to the appropriateness of the proposed unit, the record was kept open because factual matters pertaining to the showing of interest remained. After additional showing of interest cards were submitted, the Union filed a motion to lift the order to show cause. In addition, the Union filed a list of the adjunct faculty members employed as of April 20, and the Board agreed that the list was accurate. I then determined that the Union had filed a valid showing of interest. Accordingly, I canceled the hearing, closed the record, and directed the parties to file their post-hearing documents.

On September 13, the parties filed timely post-hearing documents, which have been considered in preparing this recommended order.¹ A transcript of the hearing has not yet been filed with the Commission.

FINDINGS OF FACT

Based on the record as a whole, I make the following findings:

1. The Board is a public employer within the meaning of Section 447.203(2), Florida Statutes (2017).² (Stipulation 1)
2. The Union is an employee organization within the meaning of Section 447.203(11), Florida Statutes, and is properly registered with the Commission as a labor organization. See *In re Application for Renewal of Registration of Service Employees International Union (SEIU), Florida Public Services Union (FPSU), Change To Win (CTW)*, Case No. OR-07-012 (PERC July 21, 2017) (granting registration for a one-year period from the date of the order). (Stipulation 2)
3. The Union asserts that the following description of classifications are appropriate for the bargaining unit and those to be excluded are as follows:

INCLUDED: All part-time non-tenure-track faculty (including Adjunct Faculty, Adjuncts-Contingent, Adjunct, Adjunct Instruct, Skilled Craftsman, Into/Pathways, Instructor, Instructor I, Instructor II, and Hourly Employee) employed by the University of South Florida at its Tampa Campus, St. Petersburg Campus, and Sarasota-Manatee Campus, who is teaching at least one college-credit-bearing course, including any employee who also works for the

¹The parties' post-hearing documents were originally due on September 11, but based on Hurricane Irma, the deadline was extended to September 13.

²All references to Florida Statutes are to the 2017 version.

University in another capacity unless expressly excluded.

EXCLUDED: All other faculty, including tenured and tenure-track faculty, full-time faculty, visiting or contract faculty, faculty who are currently part of an existing bargaining unit, all administrations (including academic advisors, deans, assistants to deans, provost, directors, coordinators, can department chairs), student services advising generalists, athletic coaches, all faculty teaching at the College of Medicine, School of Nursing, School of Health Policy and Management, School of Public Health Practice, School of Epidemiology Biostatistics, School of Environmental and Occupational Health, Morsani College of Medicine, College of Public Health, School of Physical Therapy, School of Biomedical Sciences, and College of Pharmacy, all other employees who are not compensated additionally for teaching, managers, confidential employees, and supervisors.

4. The University of South Florida (USF) is a public institution of higher learning that is comprised of three separately accredited institutions. Its campuses are located in Tampa, St. Petersburg, and Sarasota. Each campus is divided into different colleges, schools, and departments³ based largely on areas of study, research, and instruction. USF offers classes to students during three semesters: Spring, Summer, and Fall.

5. USF's mission is to provide high quality undergraduate, graduate, and professional programs to the public that ensure their students' future success. In order to achieve such results, acquiring superior talent, both for long-term or short-term employment, "is of paramount importance to USF." (Ex. P-7 at 1)

³For purposes of this order, I refer to colleges, departments, or schools within USF as "colleges."

6. The Board retains full-time faculty members for long-term employment. In addition, the Board employs two types of temporary appointments: (1) student appointments and (2) non-student appointments. Adjunct faculty members are included in the temporary non-student category. *Id.* Adjuncts teach both credit bearing and non-credit bearing courses to students enrolled at USF's campuses.

7. The Board's full-time faculty members have organized for purposes of collective bargaining and are represented by United Faculty of Florida (UFF). (Certificate 1395) USF's graduate students have organized for purposes of collective bargaining and are also represented by UFF. (Certificate 502) The adjunct faculty members are not included under either certification.

8. The Board has determined the adjuncts' terms of employment, including benefits, which are administered uniformly across the campuses and colleges. Temporary employees, including adjuncts, are also subject to a grievance procedure distinct from the grievance procedure available to full-time faculty members and other groups of employees. (Exs. P-19 and P-20)

9. Adjuncts are subject to a uniform pay structure that bases an adjunct's salary on the hours of courses that the adjunct will be teaching and determining the percentage of full-time equivalent (FTE).

10. Adjuncts receive the same benefits. They are not provided with health coverage, sick leave, or annual leave. They also do not receive additional funds for supplies or parking passes. In addition, adjuncts are limited on the number of classes

they teach in order to avoid qualifying as full-time employees eligible for additional benefits.

11. During their employment, adjuncts are required to contribute to the Temporary Employment Retirement Plan (TERP), which is a private retirement plan instead of Social Security.

12. While the Board has established the general terms applicable to adjuncts, the individual colleges hire the adjuncts based on their needs, including whether full-time faculty members are available to teach a class and whether student demand requires more classes. Adjuncts must hold degrees of higher learning, such as masters and doctorate degrees, in addition to other necessary certifications or credentials that may be necessary for specific colleges or courses.

13. The individual colleges set the rate for the specific classes based on the difficulty of the course, the credentials required, and other factors. However, the colleges do provide some flexibility with the specific rate to account for other dynamics that are necessary to retain the appropriate faculty.

14. The Office of the Provost at USF has provided a template adjunct offer letter to the various colleges within USF. Colleges may utilize the template offer letter or create their own that conveys the same standard terms of adjunct employment. The offer letter specifies the term of employment and provides that modification or termination of employment may occur under various conditions, such as the class size not meeting a minimum threshold. (Exs. R-54 and Ex. P-1)

15. The offer letter sets the term of employment, including the specific length of employment for each semester in which an adjunct is utilized. A college will contact an adjunct months before the next semester is to begin to ask if the adjunct is available to teach the following semester. An adjunct must sign the offer letter before he or she can teach the course. Adjuncts are then required to fill out pre-employment paperwork with the Human Resources Department, including pre-employment criminal background checks, unless such a check has already been completed.

16. The Board provides a template evaluation for adjuncts that focuses on whether the adjunct should be considered for future appointments. (Ex. R-45) However, many colleges use more in-depth evaluations that provide additional feedback to the adjunct. In addition, adjuncts are subject to student evaluations at the end of each semester for each course they teach and can access those evaluations to improve their teaching skills.

17. Adjuncts perform the same type of duties across the various colleges of USF. The adjuncts are responsible for the assigned courses, including preparing the lessons, teaching the course, creating a syllabus for their course, grading the students' tests and assignments, and meeting with students to answer questions. The adjuncts are required to keep office hours in a USF-provided shared office or to be available to their students by other means.

18. If an adjunct is unable to teach a class based on sickness or a conflict, that adjunct can request to contact another adjunct to teach the class on that day.

19. Each adjunct must be qualified to teach the course's subject matter and have any necessary certifications or other specialized mastery as required by the college offering that subject. For example, adjuncts who are teaching tax courses must have a tax specialization. Likewise, adjuncts teaching courses pertaining to a Master of Educational Leadership must meet certain criteria based on standards required by the State.

20. At times, adjuncts will also be retained to redesign a class and will be compensated for that role, based on the effort that the individual class requires.

21. The Board offers adjuncts the opportunity to attend specialized trainings to further develop their skills in teaching. (Ex. P-15)

22. The deans and chairs are responsible for the oversight of their respective departments or schools, including employing the necessary adjuncts. Retaining high quality adjuncts is important in order to cover gaps in teaching courses that full-time faculty members are unable to cover based on various factors, including retirement, leave, or a lack of specialized expertise in an area. In addition, adjuncts are necessary when the student demand for a course is higher than its faculty members can accommodate.

23. In order to guarantee the Board can retain the most qualified instructional staff, the colleges have developed an adjunct pool. Often, the adjunct pool has been developed by reaching out to and retaining former students who performed well in their former roles of assisting faculty members in teaching other students. For example, Dr. Uday Murthy would reach out to teaching assistants who did an excellent job while at

USF and let them know that he would love to have them come back and teach. Adjuncts for the adjunct pool are also developed through the connections of USF employees and faculty to the community and experts in the field.

24. The chairs of the departments within USF pay special attention to how the adjuncts perform their duties so they can evaluate whether adjuncts should be contacted in the future. The adjuncts are evaluated each semester, both by supervisors and by students.

25. Adjuncts who have demonstrated a proficiency in teaching USF students have been sought by USF staff to come back year after year. Some adjuncts have worked as an adjunct for USF continuously since 2009. For example, Tara Blackwell has worked as an adjunct for USF continuously since 2014, Mark Castricone continuously since 2009, and Rebecca Skelton continuously since 2013. It is common for adjuncts to work for years and years.

26. Few adjuncts are retained over the summer. Further, some adjuncts teach one course out of a two course series and thus only teach one semester in an academic year.

27. Adjuncts have a regular pattern of continuing employment in past academic years. For example, the Electrical Engineering Department designed a course specifically for one adjunct so that the adjunct can continue to teach USF students on just one day out of the week and work in his other job the remaining week. Two other adjunct faculty members in that department are retired full-time faculty who previously taught courses and have continued to teach these courses for the past few years because the

department does not have the resources to replace those prior faculty members. In another example, a former student with particular expertise in a new area has continued to teach classes in his area of expertise for the past few years.

28. Adjuncts generally receive a contract for teaching the following semester while they are still completing their current term. However, the adjuncts recognize that their contract states the current term of their employment and that the Board is not required to hire them for future semesters.

29. Within the Board, there is a pattern that after an adjunct has received favorable evaluations, that adjunct is sought out in subsequent semesters repeatedly. The adjuncts have developed a reasonable expectation that the Board will continue to employ them in the future.

ANALYSIS AND DISCUSSION

SEIU is seeking to represent a unit of adjuncts employed by the Board. The Board opposes this petition and alleges that, as a threshold issue, adjuncts as a whole cannot organize into a proposed unit because the Board, through BOT Regulation USF 10.204(3), has determined that adjuncts are temporary employees who "do not have or permanent status or tenure and have no right or expectation to continued employment." Further, the Board asserts that the petitioned-for unit is inappropriate based on the statutory criterion set forth in Section 447.307(4), Florida Statutes, because (1) adjuncts have no reasonable expectation of continued employment; (2) adjuncts do not share a community of interest with each other; (3) the Commission must consider the principles of efficient administration of government and in this case, permitting these public employees

to organize would interfere with the University's ability to provide competitive, high quality education to the public; and (4) the petitioned-for unit would result in the unnecessary proliferation of bargaining units.

I will first address the Board's argument that adjunct public employees are estopped from being able to unionize based on the BOT regulation. Next, I will address whether the proposed unit is appropriate based on the statutory factors set forth in Section 447.307(4), Florida Statutes.

The Board's Ability To Deny A Group Of Its Employees
From Collective Bargaining Through Regulation

The Board first alleges that the Commission should recognize from the onset that its adjuncts as a whole cannot collectively bargain because under the explicit terms of BOT Regulation USF 10.204(3), temporary USF employees "do not have or earn permanent status or tenure and have no right or expectation to continued employment." The Board further explains that by promulgating this regulation, the Board made an intentional choice to preserve the flexibility and discretion required in order to best utilize its adjuncts. Thus, based on this regulation, since adjuncts are temporary employees, they are barred from collective bargaining.

Any discussion of a group of public employees⁴ right to be able to collectively bargain must begin with Article I, Section 6, of the Florida Constitution, which guarantees: "The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike." Likewise,

⁴In its argument, the Board does not challenge whether adjuncts are public employees. See § 447.203(3), Fla. Stat.

the Florida Supreme Court has held that public employees have the right to “effective collective bargaining.” *Hillsborough County GEA v. Hillsborough County Aviation Authority*, 522 So. 2d 358, 363 (Fla. 1988). In fact, even the Legislature cannot abridge public employees’ right to bargain collectively, absent a compelling state interest making it necessary to do so. *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030, 1033 (Fla. 1999) (holding that the Legislature failed to prove the requisite necessity for a wholesale ban on collective bargaining by government lawyers).

Based on this clear precedent, the Board cannot negate a group of public employees’ constitutional right to collectively bargain by passing a regulation. Further, the Commission is not bound by the label an employer has applied to a group of its employees when the Commission is determining whether a group of employees is appropriately included in a unit. See *Communications Workers of America, v. City of Safety Harbor*, 32 FPER ¶ 175 (2006) (“[A]n employer’s labeling of part-time employees as ‘temporary’ is not dispositive of the issue of whether they are appropriately included in a bargaining unit with full-time employees.”); *Florida Public Employees Council 79, AFSCME v. City of Jacksonville*, 13 FPER ¶ 18273 (1987). Instead, the individual facts of each case must be reviewed in order to determine whether a certain group of employees is appropriate for unit inclusion. See *id.* Accordingly, this argument is denied as meritless.⁵

⁵To the extent that the Board asserts that adjuncts do not have a reasonable expectation of continued employment based on the specific facts pertaining to this case, I will address that factor below along with the other appropriate factors that must be considered in defining a unit.

Analysis Of Statutory Factors In Defining A Proposed Unit

In turning to whether the proposed bargaining unit is appropriate, Section 447.307(4), Florida Statutes, sets forth the factors that the Commission considers in defining a proposed bargaining unit. These include the community of interest among those proposed for the unit, the principles of efficient administration of government, the number of employee organizations with which the employer might have to negotiate, the compatibility of the unit with the joint responsibilities of the public employer and public employees to represent the public, the organizational structure of the public employer, and other such factors and policies as the Commission may deem appropriate. See § 447.307(4)(a)-(h), Fla. Stat. The Commission also considers the following additional factors when defining an appropriate bargaining unit:

- (1) The fragmentation of bargaining units;
- (2) The possible conflict of interest between employees in the proposed unit; and
- (3) The reasonable expectancy of continued employment of employees in the proposed unit.

Fla. Admin. Code R. 60CC-1.002(1). When a union proposes a facially appropriate bargaining unit, the employer carries the burden to prove that unit is inappropriate.

Chipola Educational Support Personnel Association v. Chipola Junior College, 21 FPER ¶ 26067 (1995).

The Commission has previously approved units of full-time, tenured faculty at universities on a number of occasions, including a unit of full-time faculty at USF. See, e.g., *United Faculty of Florida v. University of South Florida Board of Trustees*, 29 FPER ¶ 146 (2003). Recently, the Commission considered whether a proposed

bargaining unit comprised solely of adjunct faculty is an appropriate unit and determined that such a unit was appropriate where the record established that the adjuncts share a community of interest based on wages and other conditions of employment and have a reasonable expectation of continued employment. *Service Employees International Union (SEIU), Florida Public Services Union (FPSU), Change To Win (CTW) v. Hillsborough Community College Board of Trustees*, 43 FPER ¶ 126 (2016). In reaching this decision, the Commission considered the hearing officer's recommended order, which noted that the National Labor Relations Board (NLRB) has long held that units of adjunct faculty are appropriate where there is a continued expectation of employment. *Id.* (relying on *C.W. Post Center*, 198 NLRB 453, 454 (1972), for the holding that where adjunct faculty have "a regular pattern of continuing employment in past academic years," it is indicative of an "expectation of future employment necessary to establish a continuing interest in the unit").

Thus, I turn to the factors set forth in Section 447.307 and in precedent to determine whether the Union has proposed a facially appropriate bargaining unit.

Community Of Interest

The first factor to consider is whether the employees in the proposed unit have a community of interest with each other. Section 447.307(4)(f), Florida Statutes, lists several considerations that may be relevant in determining the existence of a community of interest:

1. The manner in which wages and other terms of employment are determined.
2. The method by which jobs and salary classifications are determined.

3. The interdependence of jobs and the interchange of employees.
4. The desires of the employees.
5. The history of employee relations within the organization of the public employer concerning organization and negotiation and the interest of the employees and the employer in the continuation of a traditional, workable, and accepted negotiation relationship.

§ 447.307(4)(f), Fla. Stat.; *Leon County Police Benevolent Association, Inc. v. City of Tallahassee*, 11 FPER ¶ 16235 (1985), *aff'd*, 491 So. 2d 589 (Fla. 1st DCA 1986).

In looking at the terms of employment and the method in which jobs and salary classifications are determined, the record establishes that at USF, adjuncts across all three campuses are part of the same classification. The adjuncts' terms of employment, including benefits, are determined and administered uniformly by the Board. The Board has provided a template adjunct offer letter that colleges may utilize or the colleges may create their own that conveys the same standard terms of adjunct employment. The offer letter specifies the term of employment and provides that modification or termination of employment may occur under various conditions, such as the class size not meeting a minimum threshold. (Exs. R-54 and Ex. P-1) The template offer letter further informs adjuncts of the uniform pay structure, providing that adjuncts are paid a salary that uses the hours of courses that the adjunct will be teaching and determining the percentage of FTE, which compares the hours a part-time professor teaches to the hours a full-time professor teaches. They cannot earn overtime for their duties.

While the Board's adjuncts are paid based on a set salary structure that is system-wide, the specific rate is set by their respective colleges and depends on the difficulty of the course and the credentials required, in addition to other factors. Adjuncts are also

subject to evaluations and supervision, but the individual colleges provide the evaluations and supervision. The Board provides a template evaluation that focuses whether the adjunct should be considered for future appointments. (Ex. R-45) However, many colleges use more in-depth evaluations that provide additional feedback to the adjunct.

Finally, adjuncts are also subject to student evaluations.

In considering the adjuncts' duties, the interdependence of jobs, and interchange of employees, the adjuncts perform the same type of duties across the various colleges of USF. Adjuncts prepare the lessons, teach the course, create a syllabus for their course, grade the students' tests and assignments, and meet with students to answer questions. Adjuncts keep office hours in a USF-provided shared office or must be available to their students by other means. If an adjunct is unable to teach a class based on sickness or a conflict, that adjunct can seek permission to have another adjunct to teach the class on that day. At times, adjuncts will also be retained to redesign a class and will be compensated for that role, based on the effort that the individual class requires.

Adjuncts at USF must have a master's degree or higher education attained, depending on the course to be taught. Further, each adjunct must be qualified to teach the course's subject matter and have any necessary certifications or other specialized mastery as required by the college offering that subject. For example, adjuncts who are teaching tax courses must have a tax specialization. Likewise, adjuncts teaching courses pertaining to a Master of Educational Leadership must meet certain criteria based on standards required by the State.

Adjuncts are in the same position in terms of benefits. They do not receive health coverage, sick leave, or annual leave. While adjuncts can teach multiple classes in one semester, they cannot teach so many that they would be entitled to receive additional benefits like health care. They also do not receive additional funds for supplies or parking passes. During their employment, adjuncts are required to contribute to TERP, which is a private retirement plan instead of Social Security. *Id.* In addition, the Board offers adjuncts the opportunity to attend specialized trainings to further develop their skills in teaching. (Ex. P-15)

While not controlling, the desires of the employees is another factor for determining whether a community of interest exists among employees proposed for inclusion in a bargaining unit. § 447.307(4)(f)4., Fla. Stat; see *Jacksonville Beach Fire Fighters Association, Local 2622, IAFF v. City of Jacksonville Beach*, 5 FPER ¶ 10059 at 71-72 (1979). The showing of interest supports a finding of community of interest.

Upon reviewing all of these factors, the evidence demonstrates that adjuncts share the manner in which their wages and other terms of employment are determined. While the Board has generally set forth a common structure of supervision, evaluations, wage structure, and hourly structure for adjuncts, the adjuncts are subject to the individual colleges in determining the precise amount of wages, evaluations, and supervision. Further, adjuncts share the method by which jobs and salary classifications are determined and all adjuncts are in the same classification. In reviewing the adjuncts' duties, the interdependence of jobs, and the interchange of employees, the evidence shows that they perform similar duties to each other and can substitute for each other,

assuming the individual adjunct is qualified to teach in that area. Finally, in reviewing the desires of the employees, the employees through their showing of interest have demonstrated additional evidence to support a community of interest. In considering all of the relevant factors that apply to this case and the evidence presented, I find that a community of interest has been established.

Reasonable Expectation Of Continued Employment

The next disputed factor to be addressed in this case is whether the adjuncts have a reasonable expectation of continued employment. As recognized in *Service Employees International Union (SEIU), Florida Public Services Union (FPSU), Change To Win (CTW) v. Hillsborough Community College Board of Trustees*, 43 FPER ¶ 126 (2016), the NLRB has long held that units of adjunct faculty are appropriate where there is a continued expectation of employment. *Id.* (relying on *C.W. Post Center*, 198 NLRB 453, 454 (1972)). In *C.W. Post Center*, the Board considered factors such as whether adjuncts had signed teaching contracts and the extent to which they had actually taught over previous semesters to determine whether adjunct faculty members have “a regular pattern of continuing employment in past academic years.” *Id.*

The Board’s mission is to provide high quality undergraduate, graduate, and professional programs to the public that ensure their students’ future success. In order to achieve such results, acquiring superior talent “is of paramount importance to USF.” (Ex. P-7 at 1) The chairs are responsible for their the oversight of their respective departments or schools, including employing the necessary adjuncts. Adjuncts are important to the Board’s mission in order to cover gaps in teaching courses that full-time faculty

members are unable to cover based on various factors, including retirement, leave, or a lack of specialized expertise in an area. In addition, adjuncts are necessary when the student demand for a course was higher than its full-time faculty members could accommodate.

As noted in my factual findings, in order to guarantee the Board can retain the most qualified instructional staff, the colleges have developed an adjunct pool. Often, the adjunct pool has been developed by retaining former students who assisted faculty in teaching classes or through contacts initiated by USF employees. For example, Dr. Murthy would reach out to those teaching assistants who did an excellent job while at USF and let them know that he would love to have them come back and teach. In addition, the Board relies on their connections in the community and their faculty members' connections to identify highly qualified adjuncts.

The chairs of the departments within USF pay special attention to how the adjuncts perform their duties so they can evaluate whether the adjunct should be called back for future needs. The adjuncts are evaluated each semester, both by supervisors and by students. These evaluations are also provided to the adjuncts so they can improve their teaching. Adjuncts who did not perform well were not called to come back.

The evidence demonstrates that adjuncts who have demonstrated a proficiency in teaching USF students have been sought by USF staff to come back year after year. Some adjuncts have been continuously employed since 2009, while others were continuously employed since 2013 and 2014. Generally, employees from USF reach out to their former adjuncts and inquire whether the adjunct can teach for an upcoming

semester. However, some adjuncts will make contact with the Board first. Even the Board's witnesses supported the conclusion that adjuncts have a regular pattern of continuing employment in past academic years. For example, numerous adjuncts in the Electrical Engineering Department had been retained in those position for years.

Further, this pattern of receiving favorable evaluations and then being sought out in subsequent semesters has provided the adjuncts with a reasonable expectation of continued employment in the future. In fact, adjuncts often receive their next contract for teaching in the following semester while they are still completing their current term.

Even though adjuncts sign a contract that states the current term of their employment, this does not destroy their reasonable expectation of continued employment, particularly in this case where there is no limitation placed on their reemployment.

Compare with United Public Employees of South Florida, Division 1, Local Union 688 v. City of Sweetwater, 14 FPER ¶ 19320 (1988) (holding that a limitation upon their length of employment, i.e., graduation, "does not destroy their expectancy of continued employment while they are attending college"); *City of Tampa v. ATU Local 1464*, 7 FPER ¶ 12141 (1981) (CETA employees' expectation of continued employment not destroyed by eighteen-month limit on employment). Although some adjuncts are not called back because they performed poorly, the Commission has previously held that even probationary employees have a reasonable expectation of continued employment.

Florida State Lodge, Fraternal Order of Police, Inc. v. Town of Highland Beach, 43 FPER ¶ 171 (2016).

After considering the evidence presented, I conclude that the record establishes these employees have a reasonable expectation of continued employment.

Fragmentation

In defining a proposed bargaining unit, it is important to consider principles of efficient administration of government, the number of employee organizations with which the employer might have to negotiate, and the organizational structure of the public employer. *Suncoast Professional Firefighters and Paramedics, International Association of Fire Fighters, Local 2546 v. Southern Manatee Fire Rescue District*, 36 FPER ¶ 144 (2010). These factors are generally considered together and address the duty to avoid unnecessary fragmentation. *Id.* Petitions seeking units confined to either a small group of employees or a single department have been routinely dismissed by the Commission. See, e.g., *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union v. City of Pensacola*, 35 FPER ¶ 281 (2009); *International Union of Operating Engineers, Local 673 v. Orange County Building Department*, 13 FPER ¶ 18125 (1987). Deviation from this policy has occurred only upon a showing of exceptional circumstances, a unique community of interest, or a conflict of interest justifying the fragmentation. See *Hillsborough County Government Employees Association, Inc. v. Hillsborough County Emergency Medical Services*, 7 FPER ¶ 12350 (1981). Even if the parties seek to waive fragmentation, the Commission has a duty independent of the parties' pleadings to determine that an appropriate unit is defined, including to avoid unnecessary fragmentation. *Suncoast Professional Firefighters and*

Paramedics, International Association of Fire Fighters, Local 2546 v. Southern Manatee Fire Rescue District, 36 FPER ¶ 144 (2010).

The Board currently negotiates with five separate bargaining units: professional support personnel are represented by AFSCME (except for professional health care employees) under PERC Certification No. 1587; non-professional support personnel are represented by AFSCME under PERC Certification No. 1508; non-supervisory law enforcement officers are represented by the PBA under PERC Certification No. 1414; university faculty are represented by UFF (except employees of the College of Medicine) under PERC Certification No. 1395; and graduate students are represented by UFF under PERC Certification No. 502. Adjunct faculty members have not previously been included in either of the other two units that encompass the instructional employees. Counsel for the Board conceded at the hearing that adjuncts are in a different position from both faculty members and from graduate students.

In Service Employees International Union v. Hillsborough Community College Board of Trustees, 43 FPER ¶ 126 (2016), the hearing officer considered fragmentation. The hearing officer reviewed the other bargaining units present at Hillsborough Community College (HCC), including a unit of professional employees, non-instructional staff, non-instructional supervisors, and full-time faculty. Adjunct faculty was a separate unit that did not share a community of interest with the other units. The addition of a new bargaining unit consisting of adjunct faculty did not violate fragmentation concerns in that case.

In looking to this case, the proposed unit of adjuncts is not confined to either a small group of employees but consists of a group of hundreds of employees. This is also a classification that stretches across multiple colleges and campuses. Full-time faculty, graduate assistants, support personnel, and the other employees lack a community of interest with the proposed unit. I do not find that recognizing a unit comprised of adjuncts will violate fragmentation concerns.

Unit Appropriateness

After reviewing and balancing all of the relevant factors set forth in Section 447.307 and in precedent, I conclude that the Union has met its burden in proposing a facially appropriate bargaining unit. Further, the Commission has previously recognized that a unit comprised solely of adjunct faculty can be an appropriate unit so long as the factors addressed above are present. Thus, the burden shifts to the employer to demonstrate that proposed unit is inappropriate. *Chipola Educational Support Personnel Association v. Chipola Junior College*, 21 FPER ¶ 26067 (1995).

The Board first disputes whether adjuncts have a reasonable expectation of continued employment, relying on *International Union of Operating Engineers v. Gulf County Board of County Commissioners*, 16 FPER ¶ 21364 (1990). I find that case factually distinguishable from the present case because in that case, mosquito spray truck drivers and temporary manual laborers did not share any of the same employee benefits received by full-time employees and did not have a reasonable expectation of continued employment, and thus should be excluded from the proposed unit of full-time employees. In reaching this decision, the parties reached stipulations to demonstrate

why these employees, who did not share a community of interest with the other employees in the proposed unit, should be excluded. No evidence was presented to show that these employees continued to be retained by the employer year after year.

As addressed above, that case differs significantly from this case. Here, the Union presented significant evidence that demonstrated that the Board developed a system in which it could retain adjuncts who demonstrated a prior proficiency in teaching its students and called those adjuncts back year and year. Often, adjuncts had not even completed their current term before a new contract for a following term was offered to them. In fact, there was significant evidence from witnesses on both sides pertaining to how the Board needed to employ adjuncts and has created pools of adjuncts so they can repeatedly utilize well-qualified teachers who have proven themselves. The Board's argument against this finding rests primarily on the fact that adjuncts must repeatedly sign new contracts for each semester. Thus, I reject the Board's arguments that adjuncts do not have a reasonable expectation of continued employment.

Next, the Board contends that adjuncts do not share a community of because the specific rate of pay at one college may differ from the specific rate of pay at other colleges, adjuncts vary in levels of teaching experience, the different colleges provide more specific evaluations than the template evaluation, some adjuncts teach in the classroom and others teach on-line, their job location is different, and other similar discrepancies. As addressed above, the Board set up and instituted the overall policies pertaining to adjuncts. Adjuncts are subject to the same structure of supervision, evaluations, wage structure, and other requirements. Thus, they are all subject to the

same manner in which wages and other terms of employment are determined. Employees in a proposed unit do not need to work in the same building, share the same prior experience, or have the same educational background in order to share a community of interest. The evidence established that adjuncts share similar educational backgrounds and work in a similar setting, regardless of the campus or building.

Accordingly, I reject this argument.

In its third argument, the Board asserts the Commission should consider the fact that imposing bargaining obligations on the Board as it pertains to adjunct appointments would “unreasonably interfere with the University’s ability to provide competitive, high quality education to the public.” In support, the Board points to various statements from its witnesses that a collective bargaining agreement in hiring and rehiring adjuncts would limit the department heads’ flexibility. The Board, however, cites to no authority at all in which the Commission has ever held that a proposed unit should not be recognized because unionization decreases a public employer’s flexibility.

All employees in this State have a constitutional right to collectively bargain through a labor organization and a public employer cannot abridge that right. See Art. I, § 6, Fla. Const. While the Commission does look to principles of efficient administration of government, this factor has always been considered in conjunction with the community of interest and the number of employee organizations with which the employer might be required to negotiate, thus forming how the overall structure of how many bargaining units should be permitted. See, e.g., *Suncoast Professional Firefighters and Paramedics, International Association of Fire Fighters, Local 2546 v. Southern Manatee Fire Rescue*

District, 36 FPER ¶ 144 (2010); *Federation of Public Employees v. City of Miami Gardens*, 34 FPER ¶ 196 (2008). According, this argument is rejected. To the extent that this ground raises fragmentation, it is addressed in that section.

As its final argument, the Board contends that the petitioned-for unit would result in the unnecessary proliferation of bargaining units. In particular, the Board asserts that the Union inappropriately excluded all faculty teaching at USF Health Schools.⁶ In support, the Board argues that “[i]t would necessarily result in the impermissible fragmentation of the unit, the disenfranchisement of similarly situation adjuncts, and would result in the possibility of [USF] being forced to negotiate with an unreasonable number of labor organizations.”⁷

The problem of this argument, however, is that the Board presented no evidence to establish that this professional school employs adjuncts. As addressed above, the Union proposed a facially appropriate unit. Thus, the burden shifted to the employer to demonstrate that the proposed unit is inappropriate. The Board had the opportunity to

⁶As a part of this argument, the Board points out that the Union included an incorrect listing of the college names for exclusion. The Board thus included the correct names. Specifically, the petition listed many departments as separate colleges. For example, the petition listed the School of Health Policy and Management, which is the Department of Health Policy and Management and is a part of the College of Public Health. Likewise, the School of Epidemiology Biostatistics is the Department of Epidemiology and Biostatistics; the School of Environmental and Occupational Health is the Department of Environmental and Occupational Health; and the School of Environmental and Occupational Health is the Department of Environmental and Occupational Health. Each of these is a part of the College of Public Health. This correction has been made to the unit I recommend.

⁷It is worth noting that in the recognition-acknowledgment petition pertaining to the full-time faculty and professional employees of USF, all employees within the USF College of Medicine were excluded.

present all of its evidence at the hearing, but provided no factual support for this argument. Accordingly, as the Board has not met its burden in establishing this defect, this argument is rejected.

Who Is Eligible To Participate In Elections

As a final matter to be addressed, the evidence from the hearing established that few adjuncts were retained over the summer. Further, some adjuncts were retained to teach a specialized course in a series and thus worked only in one semester out of an academic year. For the reasons addressed above, their past history of employment signifies a reasonable prospect of future employment. Limiting the bargaining unit to adjuncts who are currently teaching would improperly exclude adjunct faculty who teach at USF every year but only in certain semesters. For example, if the election is held during the summer when few adjuncts teach during that time, the majority of adjuncts may be excluded from the election. By including a "look back" period, all adjunct faculty who share a community of interest are encompassed in the proposed unit. The Commission has previously approved a unit that included a look-back provision. See, e.g., *Service Employees International Union v. Hillsborough Community College Board of Trustees*, 43 FPER ¶ 126 (2016). Accordingly, I find that a "look-back" period of one full academic year on a rolling calendar is appropriate so that the unit will encompass all three semesters.

CONCLUSIONS OF LAW

1. The Union is an employee organization within the meaning of Section 447.203(11), Florida Statutes, and is properly registered with the Commission as a labor organization. See *In re Application for Renewal of Registration of Service Employees International Union (SEIU), Florida Public Services Union (FPSU), Change To Win (CTW)*, Case No. OR-07-012 (PERC July 21, 2017) (granting registration for a one-year period from the date of the order). The Board is a public employer within the meaning of Section 447.203(2), Florida Statutes. Thus, the Commission has jurisdiction of this petition.

2. The following bargaining unit, proposed by the parties, is appropriate for the purpose of collective bargaining:

INCLUDED: All part-time non-tenure-track faculty (including Adjunct Faculty, Adjuncts-Contingent, Adjunct, Adjunct Instruct, Skilled Craftsman, Into/Pathways, Instructor, Instructor I, Instructor II, and Hourly Employee) employed by the University of South Florida at its Tampa Campus, St. Petersburg Campus, and Sarasota-Manatee Campus, who is teaching at least one college-credit-bearing course, including any employee who also works for the University in another capacity unless expressly excluded.

EXCLUDED: All other faculty, including tenured and tenure-track faculty, full-time faculty, visiting or contract faculty, faculty who are currently part of an existing bargaining unit, all administrations (including academic advisors, deans, assistants to deans, provost, directors, coordinators, can department chairs), student services advising generalists, athletic coaches, all faculty teaching at the College of Nursing, Morsani College of Medicine, College of Public Health, School of Physical Therapy, School of Biomedical Sciences,

and College of Pharmacy, all other employees who are not compensated additionally for teaching, managers, confidential employees, and supervisors.

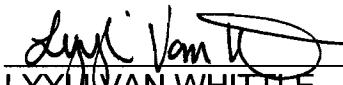
3. In determining who is eligible to participate in an election, a "look-back" period of one full academic year on a rolling calendar is appropriate so that the unit will encompass all three semesters.

RECOMMENDATION

I recommend that the Commission incorporate this order as part of the order directing election and direct that a secret ballot election be conducted in the above-described unit as soon as is practicable.

Any party may file exceptions to my recommended order, but exceptions must be received by the Commission within **fifteen** days from the date of this order. See Fla. Admin. Code Rule 28-106.217(1). The Commission may not change the findings of fact in this order without first reviewing an official transcript of the hearing. Any party who desires the Commission to review the transcript must file one with the Commission by the date exceptions are due. An extension of time for filing exceptions will not be granted unless good cause is shown.

ISSUED and SUBMITTED to the Public Employees Relations Commission in accordance with Florida Administrative Code Rule 28-106.216 and SERVED on all parties this 13th day of October, 2017.


LYNN VAN WHITTLE
Hearing Officer

LWW/bjk

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P.1

Oct 13 2017 03:15pm .

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To: Erika Lenhart Daniel Crossen Service Employees International Union, Florida Public Services Union	From: Office of the Clerk Public Employees Relations Commission
Fax: (561)965-0151	Pages: 30
Phone: (510)712-0412	Date: 10/13/2017
Case: RC-17-007	Re: Hearing Officer's Recommended Order

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To: John F. Dickinson Daniel P. Murphy Constangy, Brooks & Smith, LLC.	From: Office of the Clerk Public Employees Relations Commission
Fax: (904)356-8200	Pages: 30
Phone: (904)356-8900	Date: 10/13/2017
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To: Gerard D. Solis University of South Florida	From: Office of the Clerk Public Employees Relations Commission
Fax: (813)974-5236	Pages: 30
Phone: (813)974-2131	Date: 10/13/2017
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To: Dustin Watkins D. Marcus Braswell Sugarman & Susskind, P.A.	From: Office of the Clerk Public Employees Relations Commission
Fax: (305)447-8115	Pages: 30
Phone: (305)529-2801	Date: 10/13/2017
Case: RC-17-007	Re: Hearing Officer's Recommended Order

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