

STATE OF FLORIDA

PUBLIC EMPLOYEES RELATIONS COMMISSION

**SERVICE EMPLOYEES
INTERNATIONAL UNION (SEIU)
FLORIDA PUBLIC SERVICES
UNION (FSPU), CHANGE TO WIN (CTW),**

Case No. RC-2017-007

Petitioner,

v.

**UNIVERSITY OF SOUTH FLORIDA
BOARD OF TRUSTEES,**

Respondent.

RESPONDENT'S PROPOSED RECOMMENDED ORDER

Pursuant to notice, a telephonic hearing was conducted in this case before Lylli Van Whittle, Hearing Officer for the Florida Public Employees Relations Commissions ("PERC") on June 13, 2017.

APPEARANCES

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STATEMENT OF THE ISSUE

Whether the petitioned-for unit proposed by the Petitioner, Service Employees International Union (SEIU), Florida Public Services Union (FPSU), Change to Win (CTW), is inappropriate as a matter of law.

LEGAL FRAMEWORK AND CASE BACKGROUND

1. On April 20, 2017, Petitioner filed a petition in this case, seeking to represent certain adjunct instructors working within the USF System. Specifically, Petitioner sought to represent those individuals employed as adjuncts at all three USF campuses on the date of the petition; however, it sought to exclude all of the adjuncts working at USF Health¹ at that time.² This situation presents an issue of first impression for the Public Employees Relations Commission, and requires an examination of the legal propriety of organizing adjunct employees at public universities in Florida.

2. The Florida State University System is an entity created by the Florida Constitution, and which is comprised of all public universities in the state. While the overall statewide system is

¹ The collective “USF Health” includes the Morsani College of Medicine, the College of Nursing, the College of Public Health, the School of Physical Therapy, and the College of Pharmacy.

² The petition describes the proposed unit as follows:

Included: All part-time non-tenure track faculty (including Adjunct faculty, Adjuncts-Contingent, Adjunct, Adjunct Instructor, Skilled Craftsman, Into/Pathways, Instructor, Instructor I, Instructor II, and Hourly Employee) employed by the University of South Florida at its Tampa Campus (4202 Fowler Ave., Tampa, FL 33620), St. Petersburg Campus (107 7th Ave S, St. Petersburg, FL 33701) and Sarasota-Manatee Campus (8350 N Tamiami Trail, Sarasota, FL 34243), and 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 administrators (including academic advisors, deans, assistants to deans, provosts, directors, coordinators, and 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.

governed by a Board of Governors (BOG), the Constitution provides that each public university system within the state shall be administered by a Board of Trustees (BOT). Fla. Const., Art. IX, § 7(b).

3. In furtherance of this mandate, the Florida BOG promulgated Regulation 1.001 (University Board of Trustees Powers and Duties), in which it legislatively delegated its Constitutional grant of authority to the university system BOTs. This delegation includes control over employment, and in addition to establishing each BOT as the “sole public employer” for university employees, the Boards were also specifically instructed to create systems to govern all aspects of the employment relationship:

Each board of trustees shall provide for the establishment of the personnel program for all the employees of the university, including the president, which may include but is not limited to: compensation and other conditions of employment, recruitment and selection, nonreappointment, standards for performance and conduct, evaluation, benefits and hours of work, leave policies, recognition and awards, inventions and works, travel, learning opportunities, exchange programs, academic freedom and responsibility, promotion, assignment, demotion, transfer, tenure, and permanent status, ethical obligations and conflicts of interest, restrictive covenants, disciplinary actions, complaints, appeals and grievance procedures, and separation and termination from employment. To the extent allowed by law, university employees shall continue to be able to participate in state group insurance programs and the state retirement systems.

FL. BOG Regulation 1.001(5)(a).

4. Regulation 1.001 applies to all university systems in the state; however, USF BOT-07-001, approved by the BOG, sets forth requirements specific to the University of South Florida (USF) System. R.5.³

³ Throughout this document, Respondent’s Exhibits will be designated as “R. [exhibit number]:[page number].” Petitioner’s exhibits will be designated as “P. [exhibit number]:[page number].” References to the Transcript will be designated as “Tr. [page: line].”

5. Though administered as a collective, the USF System is actually “comprised of three separately accredited institutions: USF, USF St. Petersburg, and USF Sarasota-Manatee.” R.5:2. The USF campus is located Tampa, and includes USF Health. *Id.* Notably, the schools are distinct by design, in an effort to accommodate a wider variety of educational needs; in keeping with this objective, all USF System institutions are required to “articulate differentiated, yet complementary, missions through the development of strategic plans, compact plans, and work plans[,]” which must be approved by the USF BOT. R.5:5. These institutional differences are reflected in the “[e]nrollment profiles” of the student body among the campuses – for example, while all institutions offer graduate level courses, USF (Tampa) is the main research campus; it is also the “only doctoral-degree granting institution within the USF System.” R.5:5; R. 5:4.

6. Even though each USF System school is purposefully unique, the entire USF System still “operates within the USF Board of Trustees governance structure[,]” and each institution and department must comply with the USF BOT Regulations. R.5:3,6; *see also*, R.6, R.7, R.8, R.9 (organizational charts describing USF System governance).⁴ And, of course, this includes compliance with the regulations the BOT has promulgated with respect to employment – and those relating to the employment of adjuncts.

7. Without exception, adjuncts within the USF System are always appointed for a defined term of one semester. As such, in light of the inherently limited nature of adjunct appointments, they are specifically designated as “temporary employees” subject to Chapter 10, Part II of the BOT Regulations (Administrative, Staff, and Temporary Personnel Matters). According to BOT Regulation USF 10.200(6)(d), this means their employment is “at-will;” more specifically, by the

⁴ Additionally, each institutions, as well as the USF System as a whole, is required to comply with the policies and procedures of the Florida BOG, the State University System (SUS), and with state and federal statutes and regulations.R.5:5.

terms of BOT Regulation USF 10.204(3), it means that they “do not have or earn permanent status or tenure[,] and have no right or expectation to continued employment.”

8. As temporary employees, adjuncts are entitled to those benefits described in BOT Regulation USF 10.203 (Benefits and Hours of Work):

(2)(b) Temporary employees are eligible for unpaid leave, in accordance with any applicable federal or Florida law.

[...]

(d) Exempt Temporary employees are eligible to be paid for USF system-designated holidays that fall within the period of their appointment proportionate to the time in pay status.

(e) Temporary employees are eligible to participate in tax sheltered annuities and deferred compensation programs offered by the USF system.⁵

9. As temporary employees with specified appointment dates, adjuncts are not entitled to notice of non-appointment at the end of their terms. BOT Regulation USF 10.210(2)(a).⁶ They are also not required to receive formal evaluations. BOT Regulation USF 10.207(3).⁷

10. The USF System’s centralized Division of Human Resources (DHR), which is responsible for enacting policies that support BOT Regulations, adopts the USF BOT’s language when classifying and discussing adjuncts. Thus, according to the DHR’s Appointment Modifiers and Descriptions of Faculty, an “adjunct” is defined as:

⁵ Although adjuncts are engaged in teaching and are thereby often referred to as “Faculty,” for the purposes of the BOT Regulations, adjuncts are clearly excluded from Faculty coverage. *See, for example*, BOT Regulation USF 10.104, Faculty Benefits and Hours of Work (faculty members receive paid and unpaid leave, holidays, insurance programs, retirement and any other benefits that may be designated in the future; adjuncts receive benefits pursuant to Regulation 10.203).

⁶ Compare, USF 10.110(a) (requiring such notification for non-tenured faculty).

⁷ Compare, USF 10.108 (requiring faculty evaluations on a regular basis, and giving faculty the right to respond to evaluations).

A temporary appointment extended to persons of satisfactory professional qualifications who perform temporary teaching, research, or extension functions in connection with established programs. Such persons are appointed for one academic term at a time and possess no continuing contractual relationship with the university. Time spent in this appointment cannot be counted toward tenure or permanent status.

R.10:2.⁸

11. The BOT's Regulatory language is also quoted by the DHR in its USF System "Temporary (Formerly OPS) Employment Guidelines," which provide that a "temporary appointment is on a short-term basis and carries with it no commitment for continuing employment (it is considered "at will" employment)." R.15:1.⁹

12. Most notably, however, the BOT Regulation requirements are reflected in the DHR's sample "offer letter," some version of which is sent to all adjuncts prior to their appointments; these letters track the provisions of BOT Regulation USF 10.203 precisely, noting that adjuncts are entitled to be paid for USF system holidays, and that they are eligible to participate in TERP (the state Temporary Employee Retirement Program). U.2. Finally, these letters also emphasize the temporary characterization of the employment – the word "temporary" appears multiple times, and the starting and ending date of the adjunct's appointment are explicitly stated. U.2.

FACTUAL FINDINGS

13. Because of their temporary status, adjuncts play a unique and important role in the USF System. Their appointments only last for one semester, and are always for that fixed term; accordingly, adjuncts are the perfect solution to two common institutional problems – they can

⁸ The DHR also publishes an explanation of "Temporary Job Codes and Descriptions," which specifies that Temporary Job Code 9004, for a Salaried Instructor, is "Used for Faculty Adjunct Appointments." R.11:1.

⁹ This document also describes some of the differences between temporary and permanent appointments – given that a temporary appointment is, by its terms, "short term," applicants can be considered without undertaking full searches, and can be recommended by "word of mouth[.]" R.15:1. Similarly, because certain temporary employees may not have previous work experience, personal references can be substituted for employment verification, and the requirements for reference verification are relaxed. R.15:1; *see also, for example*, R.39:5-6 (obtaining alternative qualification for adjunct).

fill unexpected gaps in the schedule, or they can provide some specific expertise that regular full-time faculty does not possess. In both respects, the adjuncts' contributions serve to fill critical gaps in the USF System.

14. Speaking to the first point, various witnesses at the hearing testified as to the circumstances by which an adjunct is hired. Dr. Kofi Glover, Vice Provost for Human Resources Management and Space Planning, explained that an adjunct is “an individual who is hired on a temporary basis for a semester, for reasons of either the department needs to replace a faculty [member] who is sick or on sabbatical[,] or because suddenly a class opened that was not anticipated. So they are, in essence, a temporary hire to meet the special situation.” Tr. 164:8-14. This description was echoed by Dr. Thomas McCray Weller, Professor and Chair of the Electrical Engineering Department at USF Tampa; Dr. Weller explained that in his department, they “periodically have gaps” where full-time faculty are unavailable to teach a particular course, and adjuncts are appointed to “fill [that] gap,” particularly in the basic core undergraduate courses. Tr. 60:17; 61:17-25; 62:1; 66:4-6. Dr. Weller further noted that, while the need for an adjunct may arise when a full-time faculty member becomes unavailable, an adjunct may also be appointed based on student needs – if enrollment for a course is too high, the department may have to respond to the demand by splitting one class into two at the last minute, and assigning an adjunct to one of the classes. Tr. 66:7-20. While Dr. Weller testified that ideally, full-time faculty would cover all classes, he admitted that the department simply cannot predict enrollment ahead of time; accordingly, adjuncts are instrumental in solving the problem. Tr. 67:16-21. Dr. Uday Murthy, the Director of the Lynn Pippenger School of Accountancy in the Muma College of Business, similarly testified that in his College, the need for adjuncts is “driven largely by student needs and the schedule needs[;]” he further noted that, while “our first choice of course is full-time faculty[.]” full-time faculty may not be available. Tr. 90:4-5; 90:1-2; 89:4-5; 10-19. As

Dr. Weller testified, adjuncts in Dr. Murthy's department are typically called upon to cover lower level classes due to over-enrollment; Dr. Murthy explained that when this happens and he receives a notice from the advising office, he "[has] to scramble to really add those classes to the schedule and find adjunct faculty to cover those classes." Tr. 90:11-16. Dr. Murtha estimated that his department uses two to three adjuncts a semester, but the number could range from zero to five. Tr. 96:18-23. By contrast, Dr. Judith Ponticell, Professor of Educational Leadership and Policy Studies, and the Chair of the Department of Leadership, Counseling, Adult Career, and Higher Education, testified that she averages five to ten adjuncts across the five program departments per semester; however, she explained that adjuncts were appointed largely for the same reasons as those in other departments – specifically, Dr. Ponticell explained, when "there's a hole" in the schedule for a class that would normally be taught by full-time faculty. Tr. 77:15-20; 74:22-24; 76:12-14. And, as they do throughout the system, an adjunct would serve to fill this unexpected and temporary void.

15. Turning to the second benefit of adjunct appointments, the witnesses also testified that adjuncts may be hired based on their possession of a particular expertise. Dr. Weller explained that in his department, the adjuncts include a full-time Honeywell employee with specialized engineering experience; in addition to his normal job, this adjunct travels to the campus once a week to teach a technical course on design. Tr. 62:2-10. Dr. Weller further testified that two other adjunct appointments in his department are currently held by retired faculty members who possess similarly specific experience. Tr. 63:2-16. Along those same lines, Dr. Ponticell testified that in her Department, she may hire a full-time assistant school superintendent to teach a finance course in the evening, because such an individual would have the necessary experience and certifications. Tr. 84:18-23. Dr. Murtha noted that most of the adjuncts in his department

are former students who now work full-time at accounting firms, and who return to the school to teach courses in the evenings. Tr. 92:1-2

16. Ultimately, because different adjuncts are needed to fill different roles, individual colleges and departments are generally free to create their own hiring requirements for adjunct instructors. For example, the College of Business publishes a guideline setting forth the Adjunct Teaching Position Requirements, which specifies that candidates must qualify for multiple professional associations. R.20. The School of Accountancy publishes a similar Policy on Teaching by Adjunct Instructors and Doctoral Students, which sets forth the expectations for those positions. R.50. The College of Education publishes its own Shared Governance Guidelines, which establishes an Adjunct Faculty Committee that meets regularly to review adjunct candidates, and which sets forth the credentialing requirements for an adjunct position. Meanwhile, beyond written plans, individual schools often impose their own specific criteria for hiring adjuncts; for example, Dr. Ponticell testified that in her program, the adjuncts all teach high level graduate courses, and must be professionally certified and hold a doctoral degree, which necessarily narrows her search. Tr. 78:17; 79:1-2. By contrast, Dr. Murtha noted that in his department, it would be rare for an adjunct to be teaching an upper level graduate course, which would presumably give him a larger candidate pool. Tr. 90:20-21.

17. Such dissimilarities in adjunct qualifications and recruitment are supported by the testimony of those USF adjuncts who testified at the hearing. Jarad Fennell, an adjunct in the English department, testified that the manner in which his schedule and classes were offered and arranged “varied from semester to semester[;]” however, he indicated that he was usually contacted with an offer “shortly before the semester starts.” Tr. 24:5; 34:10; 34:21. Tara Blackwell, an adjunct in the Department of Cell Biology, Microbiology, and Molecular Biology, testified that she was hired as an adjunct because she had previously been a graduate student in

the department chair's lab; she explained that her chair would offer her "whatever needs teaching[.]" or that she would be appointed to teach classes when "it seemed like a need that needed filling[.]" Tr. 41:8-9; 43:10-17. Unlike Fennell, Blackwell stated that she typically gets advance notice of her courses, and usually learns what she will be teaching "a semester or two in advance." Tr. 50:3-4. Mark Castricone, an adjunct in both the Department of Philosophy and the Honors College, testified that he secured his appointments by approaching department chairs and asking them for teaching positions, on the grounds that "if you don't ask for stuff, you don't get things." Tr. 102:1-2, 25; 103:1-3; 106:3-5. Finally, Rebecca Skelton, an adjunct in the College of Arts and Sciences in St. Petersburg, indicated that she had previously worked with her Department Head at another institution years before; when the Department Head reached out to Skelton with an opportunity to teach a drawing class at USF, Skelton accepted. Tr. 124:1, 16-24.

18. Adjuncts also testified as to the last-minute nature of some appointments; for example, Blackwell explained that she had once been given an appointment mid-way through the semester when another adjunct quit. Tr. 44:14-16. On the other hand, Skelton testified that she has had an appointed class be canceled, because it "didn't make it[.]" Tr. 124:8.

19. Still, although their appointments may have been secured differently, the adjuncts who testified at the hearing were all quite familiar with the standard USF adjunct offer letter. This "template" letter, recommended by the USF System DHR, sets forth the terms for appointments and explains that the candidate is being offered an adjunct position at a certain rate of pay, for a defined term, with a specified starting and ending date for the appointment. R.15:2; R.19:1. The sample letter further provides that appointment to an adjunct position may qualify the individual to participate in the Temporary Employment Retirement Plan; that "[s]alaried temporary employees" are eligible for holiday pay; and that an adjunct is not entitled to any other fringe

benefits “as a temporary employee.” R.19:2¹⁰. Notably, the letter also provides that “modification or termination” of the appointment may occur if regular faculty are rescheduled to cover the appointment; if funds are not available at the time of the appointment; or, if minimum class size has not been reached by the end of the first week of class. R.19:2.¹¹

20. Despite the fact that all adjuncts sign essentially the same offer letter, the rates of pay contained in those letters vary significantly. From an institutional perspective, these differences were explained by Dr. Smith, who testified that the individual colleges in the USF System are responsible for developing their own budgets, so each college has its own method for distributing funds to different departments, and each department determines how much an adjunct will be paid. Tr. 174:21; 175:1-3; 175:7-9. Dr. Glover confirmed that adjunct pay rates are determined by individual department chairs, so adjunct pay varies across the USF system; there is no university-wide formula for determining pay rates. Tr. 167:2-3; 168:2-4; 169:2-5. Indeed, in a chart summarizing Petitioner and Respondent’s exhibits, pay ranges were widespread, with

¹⁰ By contrast, offer letters sent to non-temporary Faculty include language explaining that each “appointment is subject to the “Constitution and laws of the state of Florida and the United States[;]” those letters further state that the appointment is made “in accordance with USF System Regulation USF 10-102[.]” and that “[t]his employment offer and contract will remain in force unless otherwise specified.” R.12:1 (offer letter for Assistant Professor, Department of Psychology, St. Petersburg). The same language – specifying that the appointment is made pursuant to the Constitution and USF System Regulations, and that the employment is for an unlimited duration – appears universally across the USF System. *See, generally*, R.12, R.13, R.14, R.16, R.17.

¹¹ Although the template sets forth the general terms, individual institutions and departments have modified the document to comport to their specific needs and preferences. For example, St. Petersburg letters specify that, in addition to the three enumerated reasons for loss of an appointment, an adjunct can also be terminated if they receive a “less than satisfactory” rating in mid-semester student reviews, or if “misconduct or violations of University regulations/rules/policies occur.” R.25:2. On Tampa offer letters, after specifying the end date of the appointment, the letter notes that “no further notice of the end of your appointment is required.” R.19:1. Additionally, most colleges omit the language stating that temporary employees are not entitled to any other fringe benefits.

adjuncts earning anywhere from \$2,750 to \$6,000 for a three-hour class.¹² Moreover, the chart also demonstrated that while some adjuncts work only one class, others are have multiple semester-long appointments, teaching as many as 12 credit hours at a time.

21. Both the adjunct and administration witnesses testified as to the pay practices within their departments. Dr. Murtha explained that, unlike other schools, pay rates have been standardized in the College of Business, and that adjuncts make either \$4,000, \$5,000, or \$7,500, depending on their experience. Tr. 94:2-4; R.46. Nevertheless, even with that policy in place, there is still significant room for discretion, and the policy specifically notes that in determining where the

¹² The following chart summarizes the ranges in adjunct pay as indicated in Respondent’s and Petitioner’s exhibits.

College/Department	Campus	Salary	Course Hours	FTE	Exhibit No.
Department of World Languages	Tampa	\$2,600	4	0.24	R.18:39
Department of World Languages	Tampa	\$2,650	4	0.24	R.39
College of Arts and Sciences	St. Petersburg	\$2,750	3	0.18	P.2
College of Arts and Sciences	St. Petersburg	\$2,750	3	0.18	R.25
Department of Mathematics and Statistics	Tampa	\$2,800	4	0.24	R. 18:1
School of Public Affairs	Tampa	\$3,000	3	0.18	R.18:28
Department of World Languages	Tampa	\$3,000	4	0.24	R.18:41
Department of World Languages	Tampa	\$3,000	4	0.24	R.40
College of Education	Tampa	\$3,000	3	0.25	R.55:1
Department of Mathematics and Statistics	Tampa	\$3,200	3	0.24	R.18:1
Zimmerman School of Advertising and Mass Communications	Tampa	\$3,500	3	0.18	R.18:23
Department of Sociology	Tampa	\$3,500	3	0.18	R.18:33
Department of Communication	Tampa	\$3,500	3	0.18	R.18:47
College of Education	Tampa	\$3,500	3	0.375	R.55:3
Department of Anthropology	Tampa	\$4,000	3	0.18	R.18:21
Department of Philosophy	Tampa	\$4,000	3	0.18	R.18:50
School of Accountancy	Tampa	\$4,000	3	0.25	R.47
College of Education	Tampa	\$4,000	3	0.18	R.55:5
Department of School of Information	Tampa	\$4,500	3	0.18	R.18:25
Department of Mathematics and Statistics	Tampa	\$5,000	3	0.18	R.18:5
Department of Physics	Tampa	\$5,000	2	0.12	R.18:7
Department of Integrative Biology	Tampa	\$5,000	3	0.18	R.18:16
Accounting Department	Tampa	\$5,000	3	0.25	R.48
College of Arts and Sciences	St. Petersburg	\$6,000	6	0.36	P.3
School of Geosciences	Tampa	\$6,000	3	0.18	R.18:19
Department of History	Tampa	\$6,000	6	0.36	R.18:43
Department of Economics	Tampa	\$6,600	6	0.36	R.18:37
Department of Cell Biology, Microbiology & Molecular Biology	Tampa	\$8,000	6	0.36	R.18:10
Department of Cell Biology, Microbiology & Molecular Biology	Tampa	\$8,000	4	0.24	R.18:12
Department of Economics	Tampa	\$8,000	6	0.36	R.18:35
Department of Religious Studies	Tampa	\$9,000	9	0.54	R.18:52
Department of Chemistry	Tampa	\$10,000	4	0.24	R.18:14
Department of Sociology	Tampa	\$12,000	9	0.54	R.18:31
Department of English	Tampa	\$12,000	12	0.72	R.18:45

adjunct will fall, experience and course complexity should be taken into account. R.46. By contrast, Dr. Weller testified that in his department, adjuncts are typically paid \$6,000 per course; however, there are exceptions based on work load, and one adjunct is paid \$2,000 for an online course. Tr. 64:20-25. Dr. Ponticell testified that in her department, the typical rate is \$3,000 for a three credit hour course; however, she has the discretion to award a higher rate based on performance and specialized knowledge, and will pay up to \$4,500, where warranted. Tr. 78:5-13.

22. Once their appointments begin, the adjunct's work experience varies widely across departments, colleges, and campuses. With respect to actual job duties, Fennell – an adjunct in the English department – testified that he teaches three classes per week; that he does “a little bit” of prep the night before the classes; that he performs “grading[,] which is sometimes detailed[;]” and that he corresponds with students over email and in person. Tr. 27:15-22. Blackwell, by contrast, testified that she has not taught a class in a physical classroom since Spring of 2015; instead, she teaches online courses, so her job duties include preparing PowerPoint slides and filming the video lectures that accompany them, as well as writing online quizzes and activities. Tr. 45:1; 42:24-25; 43:1-5. Skelton, who teaches in the College of Arts and Sciences, testified that when it comes to her job duties, “each class is different” – for her drawing classes, for example, her preparation includes hiring a live model – a task which, presumably, is unique to the art department. Tr. 127:6; 12-13.

23. In terms of time spent working on their assigned courses, Fennell estimated that for a course he was comfortable teaching, he works 20 to 25 hours per week, but a new course with a major assignment could take 40 or 45 hours per week. Tr. 31:21-25. Blackwell estimated that she spends 25 hours per week on an established class, and 50 for developing a new class. Tr. 47:5-8. Like Fennell, Castricone testified that the amount of work he put into a course depends

on what he's teaching, and his familiarity with the material; overall, however, he estimated that he only works about ten hours per course per week. Tr. 109; 111:22. Skelton also estimated spending a total of about ten hours per week on a class; however, her estimation included six hours of class time and four hours of preparation and grading time. Tr. 129:13-16. As for office hours, Fennell stated that he spends an hour or so in office hours, twice per week. Tr. 29:24-25. Blackwell testified that because her classes are online, she only has one office hour per week, and most communication is by email. Tr. 46:15-18. Skelton explained that she does not keep established office hours, and that the time she spends setting up the room and taking it down after the class count as her office hours. Tr. 128:10; 7-8.

24. With respect to time spent grading assignments, experiences were similarly inconsistent. Because Fennell is required to provide feedback to students in his writing program, he testified that grading "takes a long time[,] up to 12-15 hours per week for a major project, Tr. 28:18; 29:10. Skelton, who described her grading process as primarily consisting of reviewing student portfolios, sketchbooks and other artwork, estimated spending about four hours per week in both preparations and grading. Tr. 129:13-16. For her part, Blackwell testified that she did not grade her class assignments at all – instead, tests she developed were multiple choice, and the answer sheets were processed by work study students; meanwhile, the written assignments were graded by the teaching assistants. Tr. 45:21-25; 46:1.

25. No evidence of interchange among adjuncts was presented at the hearing. Of all of the adjuncts, only Castricone worked in more than one college, and all witnesses worked exclusively on one campus. When asked if he had ever covered for another adjunct who had to miss class, Fennell testified that he had not, and indicated that he had not heard of that practice at USF; when asked the same question, Skelton also testified that she had no knowledge of adjuncts covering for each other at USF, although she admitted that it was "pretty common" at other

schools. Tr. 37:2-3; 132:14-16. Indeed, just with respect to interaction, the adjuncts could not even always identify other adjuncts working in their own departments; while Castricone stated that he was familiar with the adjuncts in the Honors College, he testified that he did not know how many adjuncts he taught with in the philosophy department because it was “hard to determine” which instructors were adjuncts. Tr. 115:1-4; 114:21-23.

26. Regarding performance evaluations, again, the evidence showed significant disparity. For example, while adjuncts in the College of Business receive written performance “letters” from the department chair, the Department of Art History provides evaluations on a form intended for part-time instructor’s annual evaluations. R.24; R.33; R.34. The Department of World Languages has developed its own 3-page “Evaluation of WLE Adjunct Faculty” document that assesses adjuncts according to 11 specific areas, and which solicits comments from the evaluator or supervisor; the “Evaluation of Adjunct Faculty” form used by the School of Accountancy seems perfunctory by comparison, as the reviewer simply checks one box indicating what information they considered, and another indicating whether or not the adjunct should be considered for rehire.¹³ R.41; R.51. In the College of Education, the Department of Leadership, Counseling, Adult, Career and Higher Education has created a form to be used for the evaluation of adjuncts as well as graduate assistants; this form offers the reviewer the opportunity to recommend the adjunct for commendations, participation in workshops, or attendance at required conferences. R.56. When asked about their individual evaluations, the adjuncts’ own experiences were similarly varied; while Blackwell stated that she meets with her immediate supervisor at the end of the semester for an informal evaluation that covers the student evaluations and general teaching advice, Skelton testified that, while she receives student

¹³ Dr. Murtha explained that adjuncts in the College of Business (and School of Accountancy) are also evaluated with an unannounced visit from the chair or director who observes the adjunct teaching. Tr. 95:16-22.

evaluations, she had never been evaluated by her supervisor. Tr. 48:20-21; 49:1-3; 130:6. Fennell has apparently never been evaluated by a supervisor, as he testified that he could not identify his direct supervisor, and indicated that he did not report to anybody in particular. Tr. 32:17-19.

27. Ultimately, in addressing their expectations of adjunct employment, the witnesses were unequivocal in their awareness of their temporary status. They acknowledged that, by the explicit terms of their appointment, their terms will necessarily end, and they may not be appointed again. While Dr. Murtha noted that, in some instances, “adjuncts that don’t do all that well and don’t get rehired[,]” in many cases, the need for an adjunct is simply eliminated by lowered enrollment or the securing of full-time faculty. Tr. 92:19-21. To this end, Castricone explained that in the philosophy department, he will ask if they have any work for him, but they “may or may not” have work available; he further noted that, “as time has gone on, [he has received appointments] less and less because they just don’t have as much for [him] as they used to.” Tr. 107:10; 106:21-23. Castricone also testified that even in the Honors College, where there are usually available adjunct positions during Fall semester, they rarely have any openings in the Spring. Tr. 107:1-6. Fennell testified that the manner in which his schedule and classes were offered and arranged “varied from semester to semester[,]” and indicated that it was his goal to obtain “permanent employment[;]” while Skelton testified that she expected to be offered more positions at USF, she acknowledged that she held the expectation “theoretically[.]” Tr. 34:10; 38:21; 131:2. As for Blackwell, she testified that her classes are offered online, so scheduling irregularities were less of a concern; however, she explained that her appointments still depended on “student demand and class availability[.]” Tr. 49:22-24; 51:2. In summing up the situation, Blackwell succinctly acknowledged that, even though she has been hired before, “there’s never any guarantee[.]”

CONCLUSIONS OF LAW

A. Introduction

In 2016, the Public Employees Relations Committee issued its decision 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), in which it found – for the first time – that a unit of adjunct employees at a state community college could constitute an appropriate unit under the law. In the wake of that decision, the Petitioner has filed a petition to represent USF employees. In doing so, it attempts to extend this ruling to adjuncts appointed to terms at a state university; however, under the specific facts of this case, as well as the distinct legal issues that are implicated by university governance, the Respondent submits that this effort is inappropriate, as a matter of law. Indeed, the Respondent proposes that, in fact, this is the case of first impression: here, the PERC is faced with the question of whether employees who – (a) have been designated, by regulation, as “temporary;” (b) have been designated, by Regulation, as having no continued expectation of employment; and (c) are appointed to their positions for the specific purpose of filling unexpected “holes” in the teaching schedule – *still* have the requisite continued expectation of employment necessary to bargain collectively under Florida law. Moreover, the Commission must also determine whether these adjuncts share a community of interest, despite the fact that all available evidence points to the vast differences in the terms and conditions of their employment. Given this reality, the Respondent submits that this case does not present the appropriate vehicle for changing the law; that a unit cannot be appropriate here; and that accordingly, the petition should be dismissed.

B. Legal Principles

In addition to the legal framework and case background outlined above, the following legal principles are applicable to the instant matter.

1. In determining whether a unit is appropriate, the PERC will consider the factors set forth in §447.307, Fla. Stat. (2016), as follows:

(4) In defining a proposed bargaining unit, the commission shall take into consideration:

- (a) The principles of efficient administration of government.
- (b) The number of employee organizations with which the employer might have to negotiate.
- (c) The compatibility of the unit with the joint responsibilities of the public employer and public employees to represent the public.
- (d) The power of the officials of government at the level of the unit to agree, or make effective recommendations to another administrative authority or to a legislative body, with respect to matters of employment upon which the employee desires to negotiate.
- (e) The organizational structure of the public employer.
- (f) Community of interest among the employees to be included in the unit, considering:

- 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 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.

- (g) The statutory authority of the public employer to administer a classification and pay plan.
- (h) Such other factors and policies as the commission may deem appropriate.

2. Pursuant to Fla. Admin. Code Rule 60CC-1.002, *Additional Unit Appropriateness Factors*, the Commission may also consider the following 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.

C. Argument

1. The Petitioned-For Unit Is Inappropriate, Because The Adjuncts Are Temporary Employees With No Expectation Of Continued Employment.

In certifying the stipulated adjunct unit in *Hillsborough*, the Hearing Officer adopted, and the Commission approved, a framework for analyzing the appropriateness of adjunct bargaining units.¹⁴ Drawing from §447.307, Fla. Stat. (2016) and 60CC-1.002, the Hearing Officer identified three critical inquiries – specifically, whether the adjuncts had a “continued expectation of employment,” whether they shared a community of interest, and whether the proposed unit would result in impermissible fragmentation. Although there were no disputed issues in that case – to the contrary, the parties stipulated to most points, including the existence of a shared community of interest – the Hearing Officer nonetheless recognized the precedential value of his decision, and announced that he would conduct an analysis of the underlying facts to ensure that the statutory requirements were met.

From the outset, the Hearing Officer acknowledged that historically, the Commission “has excluded intermittent, temporary, or seasonal workers from units because they do not have a reasonable expectation of continued employment.” He reasoned, however, that if adjunct faculty members did possess a reasonable expectation of continued employment from year-to-year, “there would be no bar on forming a separate unit.” Unfortunately, the Hearing Officer did not engage in a particularly enlightening analysis as to whether the adjuncts at *Hillsborough* did, in fact, have this expectation; instead, he adopted the parties’ stipulations and the nonbinding precedent of the National Labor Relations Board, and presumptively determined that, if a “look-back” stipulation was included in determining election eligibility, this would satisfy the

¹⁴ *Hillsborough Community College Board of Trustees*, 43 FPER ¶ 126 (2016)(Commission explicitly holding that “for the reasons stated by the hearing officer, we conclude that the proposed unit is appropriate for the purpose of collective bargaining”).

requirement. And, while that approach may work under the National Labor Relations Act or within the legislative framework of the Florida College System, community colleges do not operate like state universities, and the law that applies to private employers cannot apply to a public institution.

As described above in the legal summary, within the USF System, the BOT Regulations – which were promulgated under a Constitutional delegation of authority – provide that adjuncts are temporary employees, and the existence of any expectation of continued employment is categorically prohibited by law. By 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.” This, standing alone, should end the Commission’s inquiry – the BOT was authorized to adopt the Regulations, to use the language of its choosing, and to designate employment status based on the needs of the USF System. Here, the USF Board of Trustees made an obvious, and clearly intentional, choice to preserve the flexibility and discretion required in order to best utilize its adjuncts; to maximize its course offerings; and to maintain its reputation for academic excellence. And, under the clear law, each of these determinations was the BOT’s to make.

If the Commission ignores the BOT’s reasonable rulemaking and finds that, contrary to its designation, the adjuncts do possess an expectation of continued employment, this would fundamentally abrogate the authority vested in the Board by the state Constitution, and would impermissibly interfere with the Board’s ability to effectively operate the USF System. Beyond that, it would also violate the requirements of §447.307(g), which specifically directs the Commission to consider “the statutory authority of the public employer to administer a classification and pay plan.” Here, where this authority is so plainly established, the Commission cannot simply ignore both the BOT Regulations and the clear directive of

§447.307(g). And so, for each of these reasons, the Respondent respectfully requests that the Commission defer to the BOT Regulations, and dismiss the petition.¹⁵

While the existence of the statutory authority should be determinative here, it is nonetheless worth noting that finding that adjuncts in the USF System do not have a continued expectation of employment would also be consistent with PERC precedent. Indeed, the Commission has declined to find an expectancy to exist for part-time road workers, where their employment was “not expected to continue indefinitely[.]” *International Union of Operating Engineers, Local 653 v. Gulf County Board of County Commissioners*, 16 FPER ¶ 21364 (1990). In the same case, expectancy was also not established for seasonal mosquito sprayers, who worked only during the summer months and who had “no assurance of employment for the next spraying season.” *Id.* On the other hand, the Commission has found the expectation of continued employment to reasonably exist where part-time employees enjoyed “long-term uninterrupted employment,” and there was no evidence that their employment would “end upon a date certain.” *International Brotherhood of Painters and Allied Trades, AFL-CIO, Local Union 1010, v. City of Deerfield Beach*, 14 FPER ¶ 19099 (1988); *see also, Florida Public Employees Council 79, AFSCME v. City of Jacksonville*, 13 FPER ¶ 18273 (1987).

Applying these parameters to the instant case, it is clear that the adjuncts’ appointments are “not expected to continue indefinitely[;]” to the contrary, every adjunct acknowledged that their appointments are for the specific, defined duration of one semester – a reality that is constant across the USF System. Furthermore, they have “no assurance of employment” for the next semester, as their appointments are typically dependent on scheduling and staffing needs,

¹⁵ Notably, dismissing the petition in this case would not be inconsistent with *Hillsborough*, as the State University System differs from the State College System, both in the force of its Regulations (only the university system was created by a Constitutional grant of authority), and the language contained within the institutional rules themselves. To this end, there is no identical provision in the Hillsborough BOT policies, and no directive regarding the expectation of continued employment.

such as the unanticipated emergence of “holes” in the schedule that cannot be filled by a full-time faculty member. Meanwhile, there *is* evidence that their appointment will end on a “date certain” – in fact, that evidence is categorical, as the date is set forth on the offer letters each adjunct signs and returns to USF.

Ultimately, from a purely practical perspective, the facts presented here demonstrate that there is simply no continued expectation of employment for adjuncts in the USF System. From the outset of an appointment, each adjunct’s offer letter sets forth the specific expectations of the job, and adjuncts are aware of, and agree to, the fact that their appointments are for a limited duration and a set amount. And, they know that, while they may be reappointed to another position in another semester, their appointments cannot be extended; they also know that appointments are based on schedules and needs, and can change. Perhaps they will pick up a class when another adjunct quits, mid-semester; perhaps their class will be canceled because the minimum enrollment is not reached – regardless, every adjunct understands that appointments are inherently unpredictable. Thus, while you can hope for appointments, in the words of Dr. Blackwell, “nothing is guaranteed.” Accordingly, for this reason as well, the Respondent submits that both the law and the facts establish that there is no expectation of continued employment here, and the petition should be dismissed accordingly.

2. The Petitioned-For Unit Is Inappropriate Because The Adjuncts Do Not Share In A Community Of Interest.

Even if the Hearing Officer were to determine that the adjuncts in this case possess an expectation of continued employment, the petitioned-for unit would still be inappropriate, because the USF System adjuncts do not share in a community of interest, as required by §447.307(4)(f), Fla. Stat. (2016).

In addressing the question of community of interest in *Hillsborough*, the Hearing Officer found several areas of commonality. First, he reasoned, the adjuncts were compensated on the same scale, with adjunct faculty being “paid a set rate per instructional point based on semesters of experience and assigned load points.” According to the *Hillsborough* decision, this particular system-wide scale was quite detailed, requiring that “[a]djuncts with one to eight semesters of experience are paid \$63.15 per instructional point, and adjuncts with more than eight semesters of experience are paid \$63.33 per instructional point. One lecture credit generates ten points; one laboratory contact hour generates eight points; one clinical contact hour generates eight points; and one distance learning hour generates ten points.” While this seems to have been the determinative piece of evidence in the case, the Hearing Officer also noted that the college published an annual Adjunct Faculty Handbook – based on the existence of that document, he concluded that the Hillsborough adjuncts must share common terms and conditions of employment, as described in their collective policies and procedures.¹⁶ And, of course, the existence of a community of interest was not disputed, as the parties stipulated to this point.

But, while all of those commonalities may exist at Hillsborough Community College, absolutely none of those factors are present in the instant case. The USF System adjuncts are not paid according to a set formula; instead, their pay is highly discretionary, determined by individual department chairs, dependent on experience and specialized knowledge, and subject to individual negotiation. As a result of this discretion, USF adjuncts are essentially employed pursuant to individual contracts, with rates of pay spread across the board and ranging from \$2,500 to \$10,000 per course. With such a wide difference, and in the absence of any

¹⁶ Although not dispositive to his overall decision, with respect to the inclusion of online instructors, the Hearing Officer reasoned that their inclusion was also appropriate, as they are paid “according to the same formula as other included adjuncts on a credit hour basis and are subject to the same teaching requirements and benefits as are other adjuncts.” Moreover, he noted, many adjuncts did both online and classroom courses, further establishing a similar community of interest.

standardized equation to set wages, community of interest is certainly not established based on that particular factor. *See, District Lodge No. 112 of the International Association of Machinists and Aerospace Workers of Jacksonville, Florida, v. Jacksonville Transportation Authority*, 43 FPER ¶ 218 (2017)(adopting Hearing Officer’s decision, in which he found no community of interest where “there is no evidence demonstrating that the employees in the proposed bargaining unit share similar wages, hours, and terms and conditions of employment[.]”

As for an adjunct handbook, no such document exists in the USF System; rather, adjuncts are employed under the terms of their individual departments and colleges – which, as demonstrated at the hearing, are just as discretionary as their pay rates. Accordingly, this factor cannot establish a community of interest in this case, either.

Indeed, when considering all of the factors enumerated in §447.307(f), it would be impossible to establish any community of interest in the petitioned-for unit in this case, because the weight of the evidence demonstrates that USF System adjuncts have virtually nothing in common at all. They vary in levels of teaching experience; educational backgrounds; expertise; area of study; job location; supervision; method of evaluation; pay rate; office hours; time spent on the job; and basic job duties. Adjuncts may be post-graduate students working on their dissertations, or they may be retired professors returning to USF in a limited role, to fill a gap until a replacement can be found. Some adjuncts teach courses in multiple colleges across the state; others are full-time accountants, engineers, or assistant superintendents, teaching one class in the evenings, as their schedules permit. Some are hands-on in the classroom; others teach courses exclusively online, and have not taught in a classroom in years. They have no functional interchange, and cannot even necessarily recognize their fellow adjuncts; the idea of covering classes for other adjuncts is a foreign concept. Indeed, virtually the only thing the USF System

adjuncts have in common is the fact that they are employed temporarily, and for a specified duration – this is the lone (and ironic) common thread of their appointments.

Clearly, these facts cannot establish a community of interest, but from a practical perspective, they also underscore why a community of interest in a bargaining unit is required. In reality, it would be impossible to reconcile the interests of these distinct, varied individuals, and there is simply no way that the interests of the adjuncts, or the USF System, could be served by a “one size fits all” contract. The creation of a unit containing this many competing interests would necessarily create conflict a conflict of interest; and, given that this, too, stands in direct violation of Fla. Admin. Code Rule 60CC-1.002, for this reason, as well, the Respondent again respectfully requests that this petition be dismissed.

3. The Petitioned-For Unit Is Inappropriate Because It Ignores The Realities Of Adjunct Appointments.

While the Respondent believes that, in light of the evidence presented, the instant case is already easily distinguishable from *Hillsborough*, it still submits that the petitioned-for unit is inappropriate on other grounds as well -- specifically, §447.307(4)(a), which requires that the PERC consider “the principles of efficient administration of government.” In undertaking an analysis under this subsection, the PERC must consider what practical effect the imposition of a bargaining obligation would have on the USF System, and whether it could unreasonably interfere with the University’s ability to provide competitive, high quality education to the public; unfortunately, according to the testimony elicited at the hearing, the organization of adjuncts should pose a grave concern.¹⁷

¹⁷ As noted by the Petitioner, USF is signatory to a collective bargaining agreement with the United Faculty of Florida USF, University of South Florida Graduate Assistants United, which sets the terms and conditions of employment for Graduate Research Assistants, Graduate Research Associates, Graduate Teaching Assistants, Graduate Teaching Associates, Graduate Assistants, and Graduate Instructional Assistants. U.22. To the extent that Petitioner attempts to argue that the existence of the GAU collective bargaining agreement somehow relates to the instant organizing campaign, or that contractual limitations similar to those contained in the GAU CBA would not

Specifically, the record evidence indicates that imposing a bargaining obligation and attempting to standardize employment among the numerous disciplines, departments, and campuses would be fundamentally incompatible with the University's ability to serve its students. To this end, Dr. Weller testified that, when special arrangements have to be made with adjuncts, this affects the scheduling of courses, and any restrictions on his flexibility in hiring adjuncts would make his job more difficult. Tr. 71:1-9. Dr. Murtha similarly explained that having to be bound by a collective bargaining agreement in hiring and rehiring adjuncts would "pretty severely limit [his] flexibility," because the need for adjuncts is dependent on the schedule; if limitations were put into place, Dr. Murtha warned that he could see the process taking longer, which is problematic in cases where a gap needs to be filled fairly quickly – as Dr. Murtha explained, "we literally sometimes make this happen in a few days[.]" and having limitations on appointing adjuncts could "severely limit our ability to get those classes covered." Tr. 98:13-21, 23-24. Dr. Glover testified that organizing the adjuncts could pose a serious problem for the university, because departments tend to change their curriculum, and must lay instructors off as they become irrelevant; restrictions on ending temporary appointments would therefore be problematic. Tr. 169:12-23. Along those same lines, Dr. Smith opined that the unionization of adjuncts could lead to the diversion of funds away from hiring new faculty or funding graduate stipends; taken to the extreme, he stated, this practice could "derail the university." Tr. 177:20-22.

limit a university's flexibility in utilizing adjunct appointments, this argument is both irrelevant and unsupported. First, unlike the adjuncts, GAU members arguably share in a community of interest, most notably in that they are all students at the university – a status which already gives them certain due process rights and common interests. Additionally, while GAU are classified as temporary, unlike the adjuncts, they are also classified as "student" workers, and their terms of employment are not limited to one semester. R.37; P.22. Regardless, the lack of evidence about the GAU and its members renders the Petitioner's argument inconsequential to the status of the adjuncts.

Still, in the end, Dr. Smith best expressed the most commonsense concern, by explaining that unionization of the adjuncts would result in “a loss of flexibility that I think is the very essence of the reasons why we hire adjuncts to begin with.” Tr. 177:20-22. Noting that “adjuncts are sort of freelancers[,]” Dr. Smith explained that they have the ability to negotiate their own terms, and often, “there are really distinct reasons why people are hired at a certain higher rate than others [...] It may be a matter of [...] longevity. It may be their expertise. It may be skills that they bring that other individuals don’t have. So there can be any number of reasons that could be lost in standardization.” Tr. 179:1, 3-9. And, while the unionization of the adjuncts likely wouldn’t shut the university down, Dr. Smith did express the reasonable concern that the loss of flexibility could cause a college to choose to hire fewer adjuncts, or it might not hire upper level adjuncts; either outcome would risk losing “skills that are particularly important to the university.” Tr. 179:19-20.

Once again, this testimony underscores the fact that the proposed bargaining unit is fundamentally inconsistent with the practical realities of adjunct appointment within the USF System. Currently, department heads have the discretion, and individual adjuncts have the ability, to negotiate their own wages, terms, and conditions of employment; the imposition of a “one size fits all” contract would completely destroy this traditional, workable, and accepted relationship. §447.307(4)(f)(5), Fla. Stat. (2016). Equally critically, and as recognized by the department heads, the imposition of adjunct appointment rules, non-reappointment provisions, and other restrictions would bind the hands of directors trying to cover last-minute course needs and emergency vacancies; this, unfortunately, could result in popular core courses not being adequately covered – creating a serious problem for students and administration, and damaging the system’s academic integrity. And so, for this reason as well, the Respondent requests that the petition be dismissed.

4. The Petitioned-For Unit Is Inappropriate Because It Would Result In The Unnecessary Proliferation Of Bargaining Units.

Without waiving the above arguments, and assuming arguendo that the petitioned-for workers do have an expectation of continued employment, that they do share in a community of interest, and that their organization would not pose any institutional concerns within the USF System, the Respondent nevertheless submits that this unit would still be inappropriate, as it would represent the impermissible fragmentation of the USF Tampa adjuncts, and would result in the proliferation of bargaining units in the USF System.

Specifically, the Petitioner's exclusion, without explanation, of all adjuncts teaching at the College of Nursing, the College of Public Health, School of Physical Therapy, Morsani College of Medicine, School of Biomedical Sciences, and College of Pharmacy¹⁸ is inappropriate as a matter of law. It would necessarily result in the impermissible fragmentation of the unit, the disenfranchisement of similarly situated adjuncts, and would result in the possibility of Respondent being forced to negotiate with an unreasonable number of labor organizations – an outcome prohibited by §447.307(4)(b), Fla. Stat. (2016). *See also, Laborers International Union of North America, Local Union 517, AFL-CIO v. Marion County Board of County Commissioners*, 43 FPER ¶ 65 (2016)(dismissing a petition seeking to represent full and part-time Marion County Animal Control Officers while seeking to exclude all other employees, without explanation for the limitation; noting that in the absence of “additional facts demonstrating exceptional circumstances, a unique community of interest, or a conflict of interest justifying the fragmentation, the petition is insufficient”).

By the terms of its instant petition, the Petitioner seeks to represent an already highly differentiated group of adjuncts. They work across three academically different campuses, in

¹⁸ The Petition includes an incorrect listing of college names for exclusion. This list represents the accurate names of the schools the Petitioner intends to exclude from the unit.

different colleges and departments; they have different responsibilities, skill sets, education levels, wages, and supervision. To imagine them as a body collective is already a stretch of the imagination; accordingly, it is incomprehensible that the Petitioner would choose to exclude several hundred adjuncts working on one of the petitioned-for campuses, simply because they are classified as working in the USF Health schools. This division is particularly inexplicable, given that Tampa is already a research campus, with many of the petitioned-for adjuncts appointed to scientific positions – indeed, Petitioner’s own witness, Tara Blackwell, is an adjunct at the Department of Cell Biology, Microbiology, and Molecular Biology at Tampa; it would be reasonable to conclude that she would be more likely to share a professional community of interest with an adjunct at USF Health who was located on her campus, than a fine art adjunct appointed to work in St. Petersburg. Accordingly, Respondent submits that the petition is flawed, that it indiscriminately omits eligible unit members, and that it would create a proliferation of bargaining units if the Petitioner subsequently attempted to organize USF Health adjuncts in a separate unit. Thus, for this reason as well, the Respondent requests that the petition be dismissed.

Respectfully submitted this 11th day of September, 2017.

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STATE OF FLORIDA

PUBLIC EMPLOYEES RELATIONS COMMISSION

**SERVICE EMPLOYEES
INTERNATIONAL UNION (SEIU)
FLORIDA PUBLIC SERVICES
UNION (FSPU), CHANGE TO WIN (CTW),**

Case No. RC-2017-007

Petitioner,

v.

**UNIVERSITY OF SOUTH FLORIDA
BOARD OF TRUSTEES,**

Respondent.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Petition in Case No. RC-2017-007 be dismissed.

DONE AND ENTERED this ____ day of September, 2017.

Respectfully submitted,

Lyyli Van Whittle
Hearing Officer
State of Florida
Public Employee Relations Committee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of September, 2017, the foregoing was served
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