



## **I. INTRODUCTION**

The Service Employees International Union has thrown everything against the wall to see if something sticks. Its six unfair labor practice charges, filed on the eve of the election, contain eighteen charging allegations, each more preposterous than the last. They range from alleged management surveillance while adjuncts were painting a rock, to an email discussing the University's architectural plans.

None of the situations posited by the Union, when evaluated using facts instead of the Union's hyperbole, violate employee rights or any part of the Act. Moreover, the employees at issue are not easily intimidated. They are highly educated professionals who communicate for a living. A situation that may be considered coercive or threatening to employees typically represented by this union would not have the same impact on adjunct faculty. The benign nature of the situations discussed below coupled with the resiliency of the voting unit, leaves no doubt that the charges have no merit and should be dismissed.

## **II. ARGUMENT**

### **A. Case 21-CA-121140 – Soliciting employee grievances; Focus groups, Connect Over Coffee meetings, and University's Master Plan**

To establish unlawful solicitation of employee grievances, the union must show that the University actively sought out or requested employee grievances or complaints. *Center Construction Co. Inc.*, 345 NLRB 729 (2005). Merely providing a resource for complaints or following an existing complaint procedure is insufficient. *Longview Fibre Paper & Packaging, Inc.*, 356 NLRB No. 108 (2011). Even where solicitation occurred, without a promise to take action on a grievance, there is no unlawful act. *Airport 2000 Concessions*, 346 NLRB 958, 960 (2006).

Here, the University never solicited complaints from adjunct faculty outside of its normal practices. But even if it had, there was no implied or actual promise to remedy any issue.

1. October 2013, Human Resources Conference Room Focus Groups

The Adjuncts with Excellence (“AWE”) program was formed by the University’s Chief Human Resources Officer, Jody Bomba, in the Spring of 2013. AWE had two primary objectives: a) promote employment-related benefits already available to adjunct faculty at the University’s main and regional campuses; and b) communicate with adjunct faculty to better understand their role within the University and discuss and implement necessary improvements to ensure the best possible working environment.

The University began holding AWE focus groups on September 11, 2013 - nearly two months before the union filed its petition with the Board<sup>1</sup>. The University held additional monthly meetings in October, November, and December of 2013.<sup>2</sup>

The focus group purpose was “to invite opinions and input regarding how the University of La Verne can make your job experience even greater than it is today.”<sup>3</sup> The Human Resources Department kept notes of each meeting, detailing the discussion topics.<sup>4</sup> The topics ranged from minor individual issues, such as an adjunct being mistakenly left off an email distribution list, to the more serious and global ones, including whether adjuncts would be interested in participating in a University-sponsored retirement plan. Adjuncts at the meetings

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<sup>1</sup> Attached as Exhibit A are August 23 and 26, 2013 emails inviting adjunct faculty to the first focus group meeting on September 11, 2013. The representation petition in Case No. 21-RC-115880 was filed on October 28, 2013.

<sup>2</sup> Attached as Exhibit B are September 20, 23, and 26, 2013 and October 10 and 11, 2013 emails offering additional dates to hold focus group meetings.

<sup>3</sup> Attached as Exhibit C is the Adjuncts with Excellence Focus Group Agenda.

<sup>4</sup> Attached as Exhibit D are the Adjuncts with Excellence Focus Group Verbatim Report from focus group meetings on September 11, October 23, November 6, and 7, 2013.

also discussed ways to become better instructors by starting a mentor program and teaching workshops. One adjunct expressed appreciation for the AWE program, saying that, before attending a meeting, he did not know that some of the benefits were available to adjuncts.

Later meetings focused on the Affordable Care Act and its impact on the University. The groups met to study the new law, understand how it could impact the University, and discuss how best to implement its required changes. Due to the nature of the job duties and working hours, adjunct faculty was of foremost concern. Specifically, the University had to ascertain how to calculate hours that would qualify an adjunct faculty member for benefits under the ACA.

After the union campaign began, adjuncts in attendance sometimes brought up union issues. Some expressed positive feelings toward the union, others negative. Still others were undecided and wanted to learn more. All union-based conversations were generated by adjuncts and management's responses were limited to relating facts and occasionally referring them to external sources for more information. Human Resources representatives directed adjunct faculty to the University's website, which was created and maintained to answer questions and provide information about unionization.

In holding the focus groups, the University did not unlawfully solicit grievances because a) the focus groups existed as a resource for adjuncts long before the union campaign began; b) the focus groups discussed outstanding issues, but did not provide or implement any changes; c) the University never impliedly or explicitly promised to remedy any grievances. The focus groups provided discussion forums so that the University understood how to improve for the good of its students and employees.

2. December 2013, Connect Over Coffee Meetings<sup>5</sup>

The University's Connect Over Coffee meetings were designed to be an information source for adjuncts about the unionization process. They provided basic information about the National Labor Relations Act, employee rights, and general facts about the union. The meetings were informational only, not a forum for employee grievances.

At the outset, the charge incorrectly states that Ms. Bomba attended a Connect Over Coffee meeting at the Hanawalt House. While she participated in several Connect Over Coffee meetings, they were never at that location. When Ms. Bomba attended a meeting with Dean Reed, he would briefly introduce her and then leave. Then Ms. Bomba would present a slide show to the attendees.<sup>6</sup>

The presentation covered four main subjects. It provided a) factual information about unions and the unionization process; b) notified adjunct faculty of their rights under the law; c) described why each person's vote is important; and d) referred adjunct faculty to various sources for more information, including the University's website. The slideshow contained nothing objectionable. As with the meeting overall, the slideshow did not solicit grievances and certainly did not make any promises for improvements or other benefits for adjunct faculty.

Ms. Bomba took questions about the presentation while it was in progress, but did not open the room for discussion after the presentation ended. Therefore, there was no opportunity for adjunct faculty to raise concerns or discuss their working conditions. Since the University did not solicit grievances through these meetings, there was no ability to promise or actually

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<sup>5</sup> The complaint erroneously refers to the meetings as "Coffee Chat".

<sup>6</sup> Attached as Exhibit E is the slide show that Ms. Bomba presented during all Connect Over Coffee meetings in December 2013.

resolve them. The Connect Over Coffee meetings were designed to provide facts about the organizing campaign, which the University was lawfully able to do.

3. December 16, 2013, Meeting with Jody Bomba

After an AWE focus group meeting, Tracy Hawkins approached Ms. Bomba to discuss Ms. Hawkins' participation in a government-sponsored student loan forgiveness program. She told Ms. Bomba that in order for her to qualify for the program she had to submit the annualized number of hours she worked at the University. She indicated that she had previously met with someone from HR to get this information but did not understand how the hours had been calculated. Ms. Bomba apologized for the confusion and promised that she would look into the matter.

Ms. Bomba subsequently met with Ms. Hawkins on December 16, 2013. During the meeting, she provided the method that had been used to calculate Ms. Hawkins' annualized working hours. Since adjunct faculty generally work atypical and varied schedules, Ms. Bomba also explained the calculation that produced the total hours and indicated that it is the same method that was used to calculate eligibility for retirement benefits.

Ms. Bomba did not solicit grievances from Ms. Hawkins. Their meetings solely involved a routine employee issue. The University did not interfere with employee rights and there was no violation of the Act.

4. December 18, 2013, Meeting with Jonathan Reed

Following a Connect Over Coffee meeting on December 11, 2013, Ms. Hawkins approached the then-College of Arts and Sciences Dean, Jonathan Reed. She told him that she had not received a response from her department chair after she had sent him several emails.

Verbally and through email<sup>7</sup>, Dean Reed apologized and offered to set up a meeting to discuss the matter.

They met on the morning of December 18, 2013, two days after Ms. Hawkins had received the data from Ms. Bomba. During the meeting, Dean Reed told her he that her chair had been on sabbatical during the fall, and that he would let him know to respond to her emails. Without prompting, Ms. Hawkins then complained about several issues related to her adjunct position. She told Dean Reed of her blog and asked him to read it and share his thoughts. Dean Reed did so and replied later that day. He praised her writings as “thoughtful” and commented, “with or without a union, I hope La Verne with you (sic) in our future, can work towards an accessible education that provides life-changing experiences for our students that, in the end, level the playing field.” The following day, Ms. Hawkins thanked Dean Reed for reading her blog and noted that she “didn’t expect to change [his] mind about anything....”

That was the entirety of their communications. Dean Reed never solicited grievances. Indeed, their meeting was set up so that he could respond to her inquiry about the chair’s lack of communication. Ms. Hawkins voluntarily complained about certain issues, but never believed they were going to be fixed. Indeed, she admitted that she never expected to alter Dean Reed’s perspective. Dean Reed never promised to remedy Ms. Hawkins’ concerns.

5. February 11, 2014, Chip West Email re University’s Master Plan

Like many organizations with expansive and aging facilities, the University devotes a substantial amount of resources to maintaining its buildings and, where necessary, adding on. The Master Plan and its related Committee focus on design, facility, technology, signage and infrastructure projects that are needed to support the University now and in the coming years.

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<sup>7</sup> Attached as Exhibit F is the email exchange between Dean Reed and Ms. Hawkins.

On February 11, 2014<sup>8</sup>, the University's Assistant Vice President of Capital Planning, Facilities, and Space Management, Chip West invited all faculty to a February 24, 2014, meeting with the Master Plan Committee and the University's architectural firm, LPA, Inc., to discuss design and construction concepts and plans for the University's buildings. He also encouraged recipients to complete an on-line survey, which is open to anyone who visits the website. The anonymous survey<sup>9</sup> includes questions, such as, "what facilities, programs or experiences do you think should be incorporated (or moved) onto th[e] new campus?" It also asks the survey-taker to rate her/his satisfaction with various University-owned buildings. Nowhere does the Master Plan website or the survey mention employment issues, such as compensation or benefits. Mr. West's email doesn't either.

The Master Plan focuses on improvements to the University's physical plant. It has nothing to do with employee compensation, benefits, employment policies, or union representation. To claim that Mr. West's email somehow solicited grievances, let alone those related to employment issues, is simply unreasonable.

B. Case 21-CA-121145 – Threat to withdraw/withhold benefits; President's meeting with students (2020 Strategic Vision), Human Resources meeting with Adjuncts

An employer is free to communicate its beliefs as to the effects of unionization. *Venture Industries, Inc.*, 330 NLRB 133 (2000). It also may relate facts about how unions operate and how they have impacted employers elsewhere. *Flamingo Hilton Laughlin*, 324 NLRB 72 (1997). Likewise, an employer is permitted to identify any potential negative impacts of

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<sup>8</sup> Attached as Exhibit G is Mr. West's February 11, 2014 email, which contains a meeting invite dated February 24, 2014.

<sup>9</sup> The survey and additional information about the Master Plan can be found at <http://laverne.edu/masterplan/>

unionization. Such statements are protected under Section 8(c) of the Act. See *Ludwig Motor Corp.*, 222 NLRB 635, 636 (1976) (Board found that Section 8(c) protected “statements as to the possible results of lawful, good-faith collective bargaining”); *Uarco, Inc.*, 286 NLRB 55, 58 (1987) (“Mere reference to the possible negative outcomes of unionization, however, do not deprive the Respondent...of the protections of Section 8(c) of the Act.”) Here, the University’s conduct fit squarely within those allowances.

1. November 13, 2013, Meeting with President Lieberman

On November 13, 2013, adjunct faculty Michael Kaulback, Michael Ryan, Joseph Farago-Spencer, and Fatima Suarez, at their request, met with President Lieberman to discuss the union campaign.<sup>10</sup> All four professors said they were in favor of the union, citing different reasons why they believed the union would be beneficial for the University’s adjunct faculty.

President Lieberman expressed her support for an open dialogue among the administration, faculty, and even students. She hoped that eligible voters would become fully informed before reaching a decision about the union.

When Mr. Ryan raised the subject of adjunct compensation, President Lieberman reminded him that shortly after she joined the University two years prior, she created the Compensation Task Force. That committee was primarily charged with ensuring that full and part-time faculty, staff, and administration compensation was comparable to other institutions. President Lieberman also discussed the University’s 2020 Strategic Vision – another program created in 2011 that outlined the University’s mission and goals. She specifically cited the

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<sup>10</sup> Attached as Exhibit H are the typewritten notes taken by President Lieberman’s assistant during the meeting on November 13, 2013.

Strategic Vision’s “Human and Financial Resources” section and the related goal of equitable pay among all employees.

President Lieberman was clear about the Task Force’s limitations, however, saying that *she could not know when or how the goals would be achieved*. In doing so, she eliminated any possible misperception that she or the University was somehow promising or conferring a benefit, such as increased wages or benefits.

As the meeting concluded, President Lieberman expressed her support for adjunct faculty freedom of speech – where each person could express their views freely, whether they were for or against the union. She also commented that, regardless of the election result, she hoped that everyone at the University would continue to work well together.

President Lieberman sent a letter<sup>11</sup> to the four adjuncts shortly after the meeting, in which she reiterated her respect for adjuncts’ ability to choose for themselves. She summarized the University’s position generally and said, “To be clear, we are not anti-union. We are pro-individual rights. While the decision about representation should always be up to the individual, we value our direct working relationship with staff and faculty, including Adjuncts – believing that our ability to work collaboratively together is central to fostering our University’s unique Mission and to continue to improve our collective workplace and employment proposition.”

In *C.E. Glass*, 189 NLRB 496, 497 (1971), the employer made a speech recounting the history of the company’s growth and its past efforts to ensure that its wages were “kept equal” with other companies in the industry. The employer pledged to make its best efforts to improve profits which would in turn allow it to “improve working conditions, increase [employee] wages

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<sup>11</sup> Attached as Exhibit I is President Lieberman’s letter of November 13, 2013.

and see that [the employees] receive promotions. *Id.* at 497-498. The speech concluded: “Put your trust in the managers that you have known for years. Show us that you are 100 percent behind them.” *Id.* at 498. The Board found that the speech presented “partisan views in a noncoercive manner.” *Id.* The Board did not find any implied promises or threats. *Id.* Thus, the Board held that the speech did not constitute objectionable conduct.

Apparently, the Union’s contention is that President Lieberman implied or actually threatened the adjuncts with loss of benefits if the union prevailed. That never happened. President Lieberman merely discussed the University’s overall philosophy on wages and benefits, and identified two projects – both created well before the Union’s campaign began – that were tasked with, among other things, reviewing compensation for all University employees.

No threats or promises were made. Indeed, President Lieberman said that she could not make any guarantees on those subjects. Accordingly, there was no violation.

2. December 16, 2013, Meeting with Jody Bomba

As fully discussed in Section II.A.3., Ms. Bomba did not unlawfully solicit employee grievances and therefore did not promise remedies. Moreover, Ms. Bomba never threatened to withhold or withdraw a benefit the University granted to adjunct professors.

C. Case 21-CA-121153 – Surveillance; Rock painting and Dean listening to adjunct conversation with union representatives

Random or isolated acts of management viewing union representatives or activities are entirely permissible. *Stead Industries dba Hoyt Water Heater Co.*, 282 NLRB 1348 (1987). An employer is also allowed to observe employee activity on the employer’s grounds in order to protect the employer’s property and ensure a safe and secure environment. *Consolidated Biscuit Company*, 346 NLRB 1175 (2006).

1. Founders Rock

Founders Rock is a boulder that sits outside of Founders' Hall, adjacent to the University President's office window. It measures approximately three feet wide and four feet tall.<sup>12</sup> The University's tradition of allowing various groups to paint the rock using colors and designs of their choosing began in 1939. So long as the designs are tasteful and do not include any vulgar images or writings, the groups are permitted to paint whatever they want.<sup>13</sup>

Groups rotate so that each design remains on the rock until the next group paints over it, twenty four hours later. If no one is signed up for the next day, the rock will remain painted until the next group's date. Students often camp out on the first day of each semester to get priority painting dates.

The University allowed Voices in Action to paint on the rock during the first week of December 2013. Their design stayed until painted over by the following group. At no time, however, did University security monitor or oversee the group's painting or activities around the rock.

Stan Skipworth, the University's Director of Campus Security, confirmed that the security force had no knowledge of the group's activities. Moreover, the Officers' Log<sup>14</sup> shows that guards were not in or around Founders' Hall at 1:00 p.m. on any day during the first week of December.

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<sup>12</sup> Attached as Exhibit J is a photograph of Founders Rock.

<sup>13</sup> Attached as Exhibit K is the Rock Reservation Form and Policy.

<sup>14</sup> Attached as Exhibit L is the Officers' Log Book showing the guards' whereabouts with corresponding dates and times, during the week of December 1, 2013.

Regardless, had two guards had been parked in their golf cart across the street from where the rock sits, as alleged by the Union, they could not have overheard any conversations. Even the adjuncts' activities would have been obscured by the distance.

This charge either demonstrates the Union's unfounded paranoia or its attempt to create a dispute where none exists. Regardless, the allegations are false and the charge should be dismissed.

2. Dean's Surveillance of Union Organizer's Conversation with Faculty

During the week of January 6, 2014, the University hosted seven faculty candidates. During their visit, the candidates were asked to give a teaching demonstration in a classroom setting. One day that week, the Dean of the College of Business and Administration, Abe Helou, walked from his office to Dr. Marzwell's classroom to ask Dr. Marzwell if the University could use his class for one of the demonstrations. As Dean Helou approached LAC 102, he noticed that Dr. Marzwell was outside talking with two people whom Dean Helou initially thought were students. Dean Helou approached the three of them and, in a joking fashion, asked Dr. Marzwell if the kids are giving him a hard time.

Dean Helou quickly realized that the young man and woman with whom Dr. Marzwell was speaking were not students, but were union representatives. Believing that their conversation would end shortly, Dean Helou stepped about 40-50 feet away and waited for Dr. Marzwell. After waiting for a couple minutes, he realized that their conversation was continuing, so Dean Helou went back to his office, without having spoken to Dr. Marzwell.

Dean Helou never knew what they were discussing and never had any intention of monitoring or interfering with their conversation. This type of unintended and isolated act does substantiate the union's charge.

- D. Case 21-CA-121165 – Promising benefits; Adjuncts with Excellence,  
Compensation Task Force to improve pay, Dean’s January 13 email to adjuncts,  
January 21 email to adjuncts re 20/20 Strategic Plan, President’s January 27 letter,  
Bomba and President’s video on website

An employer may confer any benefit upon an employee when the benefit was either anticipated before union involvement or otherwise unrelated to union activity. *Guard Publishing Company*, 344 NLRB 1142 (2005). Moreover, an employer need not alter past practices; indeed it may be in violation of the Act by foregoing or delaying benefit implementation that would have occurred despite union organizing. *Automated Products*, 242 NLRB 424 (1979).

1. Distribution of Flyer Regarding Adjuncts With Excellence

In 2011, the University’s Human Resources Department underwent a substantial personnel change. Its new Chief Human Resources Officer, Jody Bomba, created programs designed to achieve more efficient operations and ensure high faculty and staff workplace satisfaction. One such program, Adjuncts with Excellence, created in early 2013, was designed for HR to engage adjunct faculty and remind them of the benefits and resources available to them at the University.

On August 21, 2013, well before the Union’s Petition was filed with the Board, the University published a flyer listing those benefits.<sup>15</sup> The benefits included eligibility to participate in the University’s 403(b) plan, discounts on meals and purchases at the University’s book store, and free parking. The flyer was merely a reminder of benefits which were already granted to adjunct faculty. There were no new benefits announced or offered.

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<sup>15</sup> Attached as Exhibit M is the Adjuncts with Excellence flyer.

Unlawful activity in violation of Section 8(a)(1) is contingent on the promise or conferral of benefits when the inducements were governed or influenced by a pending election. *Guard Publishing Co.*, 344 NLRB 1142 (2005). Here, there was no promise or conferral of benefits, because the benefits announced to University faculty through the Adjuncts with Excellence program existed long before the union organizing campaign began.

That some adjuncts were previously “unaware” of these benefits is of no consequence. Indeed, it justified the need to have the communication program in the first place. Regardless, the benefits existed long before the union’s campaign. Therefore, they could not have been conferred or promised to adjunct faculty. Since the union cannot establish a key element to its claim, the charge must be dismissed.

2. November 13, 2013, Meeting with President Lieberman

Please refer to Section II.B.1. for discussion about the November 13, 2013 meeting.

3. December 6, 2013, President Lieberman’s Email to Adjuncts

In 2011, two years before union organizing efforts began at the University, President Lieberman created the Compensation Task Force, an administrative body comprised of the University’s Provost, Chief Human Resources Officer, and representatives from full and part-time faculty and staff. At its inception, the Task Force was instructed to conduct reviews and issue recommendations to the President about compensation and benefits for all faculty and staff at the University. The ultimate goal was to create and implement an equitable and competitive compensation plan to “achieve a culture of inclusivity, accountability, and high performance”.

The Task Force started its work in September of 2012. Just over a year later, on December 6, 2013, President Lieberman wrote to all full and part-time faculty, staff, and

administrators.<sup>16</sup> The email began by reminding the readers of the Task Force's objectives. It then outlined the committee's progress, including conducting various reviews of "best practices" for pay at comparable colleges and universities. The committee discussed the Affordable Care Act and how best to implement its requirements at the University. It also drafted a compensation philosophy for the University. The email concluded by saying that the committee will be asking for input from the University community through an open forum discussion before any decisions are made.

The Task Force has not caused any changes to University policies and practices, including those pertaining to employee compensation or benefits, nor could it. The Task Force's authority is limited to review and recommendations only. Therefore, in reporting on the committee's progress, the email provides no promises of increased or improved compensation for any University employees.

Clearly, the email's central focus is the University's philosophy to zealously strive for its employees and look to market wage and benefit movement in determining what it will provide. Similar to the employers' statements in *C.E. Glass*, President Lieberman accurately recites facts regarding the University's efforts to improve for everyone's benefit. The email is completely devoid of any promises whatsoever. Likewise, there are no threats that wages or benefits will be adversely affected if CNA wins the election.

Moreover, the Compensation Task Force has nothing to do with the union. It (and the email's reporting on it) was not created or maintained to influence the union campaign. Indeed, neither the union nor unionization is mentioned anywhere in the email.

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<sup>16</sup> Attached as Exhibit N is President Lieberman's December 6, 2013 email sent to the University community.

The language speaks for itself. President Lieberman's email reported on University business and the state of one of its standing committees that had been in existence for over a year. It did not contain an implied or actual threat of reprisal or promise of benefit and therefore did not interfere with employees' Section 7 rights.

4. January 13, 2014, Dean Beardsley Email to Adjuncts

Dean Beardsley sent an email to adjuncts during their first week of classes following winter break.<sup>17</sup> It was entirely innocuous. She started by welcoming them back and thanking them for their "time, energy, and, most of all, your work with our students."

The email then addressed the pending union vote. She reiterated the University's belief that a union is not necessary for adjunct faculty. Dean Beardsley invited adjunct faculty to discuss the unionization issue among themselves and with University management, should they choose to do so. She also reminded the adjuncts to be informed and vote.

"[A]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a "threat of reprisal or force or promise of benefit." *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). Here, Dean Beardsley is expressing the University's belief that union representation wouldn't be beneficial for adjunct faculty: "You already know the university's position (that a union is not necessary for you and the university right now, particularly as the university has just initiated a holistic reform of remuneration for all faculty, including the implementation of best practices)."

Taken simply, she says that unionization isn't necessary because the University is already a good place to work. There is no threat of reprisal or promise of benefit. This statement, at

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<sup>17</sup> Attached as Exhibit O is Dean Beardsley's January 13, 2014 email.

most, comments on policies and practices that the University already had in place. Dean Beardsley does not say that benefits or compensation will change based on the election results. There is also no coercion to vote one way or another. Indeed, she concludes the email by reminding adjuncts that “the vote to unionize or not to unionize is really up to you.”

The University need not treat its adjuncts as though they are made of candyglass. It was entitled to express its opinion about the union and its campaign. Here, Dean Beardsley did that and nothing more. Since there was no implied or express promise of benefits, her email did not restrain or coerce the adjuncts in the exercise of their rights under Section 7.

5. January 21, 2014, Human Resources Email to Adjunct Faculty

On October 3, 2013, the University’s Human Resources Department announced the formation of the Professional and Organizational Development training program.<sup>18</sup> The program primarily consisted of professional and personal improvement courses, which focused on effective communication and strengthening relationships. Several weeks later, on October 24, the University sent another email with the same message, attaching a schedule of classes. These courses were available to all faculty and staff, not just adjuncts.<sup>19</sup>

The email at issue in the charge, sent on January 21, 2014, merely provided an updated schedule for the same benefit and announced two new *types* of courses, entitled Performance Management Reviewsnap and Successful Onboarding Support.<sup>20</sup> This was not a new benefit, just the continuation of an old one. The previously announced classes had already occurred, so

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<sup>18</sup> Attached as Exhibit P is the October 3, 2013 email sent from the Human Resources Department to all University faculty and staff.

<sup>19</sup> Attached as Exhibit Q is the October 24, 2013 email sent from the Human Resources Department to all University faculty and staff, with the class schedule attached.

<sup>20</sup> Attached as Exhibit R is the January 21, 2014 email sent from the Human Resources Department to all University faculty and staff, with the class schedule attached.

this email notified faculty and staff of the next round of classes, to be held in February and March of 2014.<sup>21</sup>

The University offered professional development courses to its faculty and staff long before the union campaign began. The January 21 email was not new, nor was its content. Faculty received nearly identical emails on two prior occasions – both of which predated the union’s organizing petition. Since there was no new benefit conferred on the voting unit, there could not have been a Section 7 violation.

6. January 27, 2014, President Lieberman Letter to Adjunct Faculty

As the election approached, President Lieberman sent adjunct faculty a letter<sup>22</sup> in which she told them to expect a mail ballot to arrive at their home in the following week. She asked them to reach an informed decision by educating themselves about the potential positives and negatives associated with union representation. Above all else, she emphasized the importance of voting. Finally, President Lieberman assured the adjuncts that, union or no union, “we will move forward together with civility and mutual respect on a path paved with a shared commitment to our students, to our values and to our University’s 123-year-strong mission.”

The union’s charge centers around a portion of one sentence which discusses a recommendation that the University’s Compensation Taskforce will make to the Board of Trustees. The sentence, in its entirety, reads, “For example, *while neither the union nor the University can guarantee more compensation*, this Spring, the University’s Compensation Taskforce will make recommendations to the Board of Trustees designed to ensure that our

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<sup>21</sup> Attached as Exhibit S are the slide presentations for the Professional and Organizational Development training program classes.

<sup>22</sup> Attached as Exhibit T is President Lieberman’s letter, dated January 27, 2014.

faculty and staff compensation is competitive with comparator institutions.” The only way that sentence could constitute a promise of increased benefit, is if the first half of it were to disappear.

In reality, the letter contains nothing improper. As fully discussed in Section II.D.3., the Compensation Taskforce has no ability to implement change. It merely reviews existing policies and makes recommendations – something that President Lieberman makes clear in her letter. Adjuncts who read the entire letter understood that President Lieberman was merely outlining the University’s position on unionization and detailing some of the positive changes the University has made in the prior years. There are no promises or threats and therefore nothing that would interfere with the employees’ Section 7 rights.

7. Videos Recorded by J. Bomba and President Lieberman

Throughout the organizing campaign, the University communicated with faculty, staff, students, and the public through a variety of mediums. Its video presentations, including testimonials from administrators and the president, had five primary components: an introduction to the speaker, his or her history and role at the University, an explanation of the University’s existing benefits for all faculty and staff, basic information about the union’s campaign to organize adjunct faculty, and a plea to voters to be informed and vote against unionization. None of their statements interfered with employee rights.

The first half of Ms. Bomba’s video<sup>23</sup> doesn’t mention adjunct faculty or unionization at all. Instead, she talked about the positive changes that have been made to the University’s Human Resources Department since she became the Chief HR Officer. “We’ve recently begun conversion to a new HRIS and payroll system that will, for the first time ever, bring all departments at the University onto one integrated system.”

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<sup>23</sup> Attached as Exhibit U, is the transcript from Ms. Bomba’s video presentation.

She then outlined issues that impact adjunct faculty and the manner in which the University has addressed them for the past two years. The Adjuncts with Excellence program and focus groups had allowed the University to understand what mattered most to adjunct faculty. They also assisted the University in knowing how best to improve faculty working experience. Finally, Ms. Bomba discussed the University's long-standing overall goals – "Providing an environment in which all employees are treated with respect and dignity, with fair and equitable pay and benefits, as well as world class professional development and job growth opportunities...." She concluded, "We've come a long way over the past two and a half years but know we have much further to go."

Entirely absent from Ms. Bomba's presentation is a promise – implied or actual – of any improvements, such as additional benefits and compensation. Nowhere does she speak of enhancements that the University will implement at any time in the future. Instead, she talks about the advancements that the Human Resources Department, and the University, as a whole, has made over the past two years. Logically, in order for an employer to have unlawfully promised a benefit to an employee during a union campaign, there must have been some assurances that a tangible benefit would be implemented. Since no part of Ms. Bomba's presentation guaranteed anything, the University could not have violated the Act.

President Lieberman's brief statement<sup>24</sup> discusses two avenues through which the University had previously sought improvements for all faculty – the Compensation Task Force and focus groups – both of which existed long before the union's campaign. The Compensation Task Force (discussed fully in Section II.D.3. above) was implemented two years ago, to "bring equity to all compensation levels...for all constituents." No action is being taken on

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<sup>24</sup> Attached as Exhibit V, is the transcript from President Lieberman's video presentation.

compensation at this point. Instead, the Task Force is merely “making recommendations in a timely manner.” She also talks about Human Resource Department’s focus groups, first held in September of 2013, designed to “identify what is important to [adjunct faculty] and how we can achieve these goals together.” Finally, President Lieberman asks adjunct faculty to vote after becoming educated on the facts.

The rule is clear – an employer is free to tout benefits that already exist. President Lieberman’s and Ms. Bomba’s statements do precisely that. They address the steps the University has taken to improve conditions for faculty and staff, all which happened before and without regard to the Union’s organizing efforts. Markedly absent from their presentations is an implied or actual promise of any benefit. Without this crucial element, the videos cannot violate the Act.

E. Case 21-CA-121679 – Promulgating no-solicitation rule; Dean Beardsley  
January 30, 2014 email to adjuncts re two week election voting period

On December 23, 2013, the parties agreed to a mail ballot election. Ballots would be sent to eligible voters on January 31 and must be returned by February 14, 2014.

Well aware of the restriction on so-called captive audience speeches during the election period, the University avoided any conduct that could run afoul of that rule by discontinuing communications and meetings about unionization. Anticipating that adjuncts may be confused by the University’s sudden silence, college Deans sent emails and letters to the adjuncts explaining the situation.

Dean Beardsley sent an email to adjunct professors within the College of Arts of Science on January 30, 2014.<sup>25</sup> The email contained nothing improper. It spoke only about what management would and would not do during the voting period: The University would not “send[] any mass communications or hold[] organized meetings” during the two week voting period.

Nowhere does the email instruct adjunct faculty to refrain from “soliciting either on behalf of or against the Union....” Indeed, the email doesn’t tell adjuncts to do anything at all. Far from restricting adjuncts’ actions, Dean Beardsley supported them. “[Y]ou are always welcome to talk with me about this process. If you are an eligible voter, I urge you to vote and encourage other eligible voters to do so as well.”

The Union’s claim in the charge is, quite simply, wrong. No reasonable person could construe Dean Beardsley’s words to prohibit adjunct from soliciting for or against the Union. For these reasons, the Union’s claim for Section 7 violation is meritless and the charge should be dismissed.

F. Case 21-CA-122286 – Alleged Retaliation Against Rob d’Annibale

In this charge, the Union claims that the University did not select Robert d’Annibale to teach during the Spring 2014 semester because of his union support. The facts show otherwise. Each term or semester, the University assigns courses based on student enrollment, the instructor’s seniority and previous teaching experience with a particular class.

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<sup>25</sup> Attached as Exhibit W is a copy of Dean Beardsley’s email, sent to adjunct faculty on January 30, 2014.

Mr. d'Annibale had neither going into the Spring Semester. Moreover, when classes unexpectedly became available and were offered to him in January, Mr. d'Annibale refused, saying that he was too busy to teach.

In July of 2013, Mr. d'Annibale applied for a part-time teaching position at the University. On August 12 and 13, 2013, the University confirmed his appointment to teach four courses of College Writing A, Court No. WRT 110.<sup>26</sup> Mr. d'Annibale received generally positive reviews from his students and from his reviewing supervisor, Judy Holiday.

On October 2, the University emailed Semester Availability Forms to all adjuncts, asking whether they would be available to teach during the Spring 2014 semester. On October 11, with instructor availability known, the University began setting the Spring 2014 schedule for writing classes and subsequently notifying faculty of their assignments, if they were selected.

On November 11, 2013, Cathy Irwin wrote to Mr. d'Annibale telling him that, because of low student enrollment, causing the University to offer fewer writing courses in the Spring Semester, the University could not offer him any courses to teach. At first, Mr. d'Annibale seemed to accept the news. He even complimented the University, writing, "You run a nice program." It wasn't until almost two weeks later, on November 25, that he demanded an explanation.<sup>27</sup>

During a call on November 27, Ms. Irwin explained to Mr. d'Annibale that another professor, Joshua Wagenhoffer, had been selected to teach the writing courses that Mr. d'Annibale had taught previously. This decision was made because Mr. Wagenhoffer's

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<sup>26</sup> Attached as Exhibit X are Mr. d'Annibale's four appointment letters.

<sup>27</sup> Attached as Exhibit Y is the email communications between Mr. d'Annibale and Ms. Irwin.

seniority.<sup>28</sup> He had been teaching at the University for two years, whereas Mr. d'Annibale had just started the prior semester.

Indeed, all senior adjuncts (those who were hired before July 15, 2013) were given priority and assigned courses. Only one non-senior adjunct, Megan Ghallagher, was assigned to teach a writing course in the Spring - WRT 110S. She was selected over Mr. d'Annibale because he never taught that course before, whereas, Ms. Ghallagher had.

The University's decision had nothing to do with Mr. d'Annibale's union activity – which Ms. Irwin knew nothing about. It was based on seniority and experience only.

Further evidencing that fact, in January, two of the faculty members who had agreed to teach writing courses unexpectedly withdrew. On January 24, Felicia Beardsley, the Interim Dean of the College of Arts and Sciences, emailed Mr. d'Annibale, asking whether he would be able to teach. Mr. d'Annibale responded that the class times did not fit within his schedule. On January 31, Dean Beardsley emailed him again asking whether he could teach an added section of a class (created due to an uptick in student interest). She even allowed him to set the class time as he wished. The following day, Mr. d'Annibale curtly replied, “I am booked through the spring. Please look elsewhere.”<sup>29</sup>

The General Counsel bears the burden of proof that the University failed to renew Mr. d'Annibale because of his Union activities in violation of Section 8(a)(3). *New Otani Hotel & Garden*, 325 NLRB 928, 938 (1998). This requires a prima facie showing: (a) that Mr. d'Annibale engaged in activity protected by the National Labor Relations Act (“Act”); (b) that the University's decision-maker was aware of this activity; (c) that Mr. d'Annibale suffered an

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<sup>28</sup> Attached as Exhibit Z are Ms. Irwin's notes, written contemporaneously with the phone call.

<sup>29</sup> Attached as Exhibit AA is the email exchange between Dean Beardsley and Mr. d'Annibale.

adverse employee action; and (d) a motivational link, or “nexus,” between his protected activity and the adverse employment action. *Columbian Distribution Services, Inc.*, 320 NLRB 132, 1070-71 (1996) (applying analytical framework from *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982)). The University may, then, overcome any prima facie showing by “demonstrat[ing] that the same [adverse employment] action would have taken place even absent any protected conduct.” *Id.* at 1071.

Mr. d’Annibale was not selected because of his comparatively low seniority and since he had not taught certain classes before. He therefore would not have been selected to teach during the Spring Semester regardless of his Union activity. Moreover, when three courses became available, he was offered those classes but refused to teach any of them. For these reasons, the Union’s claim for violation of Section 8(a)(3) is meritless.

### **III. REQUESTED DOCUMENTS**

- A. All correspondence sent from the University to adjunct professors who were eligible to vote between September 2013 and February 13, 2014.

Attached as Exhibit BB.

- B. Any notes, outlines, agendas or other documents documenting the conversations or the topics discussed in any of the focus groups, Connect Over Coffee meetings, or other meetings between the University and adjuncts discussed above.

Attached as Exhibit CC.

- C. Documents describing the University’s plans to address adjunct professor pay issues, for the time period of September 1, 2013, through the current date and documents showing when those plans were implemented.

Attached as Exhibit DD.

- D. Documents describing the University’s equitable pay component of its 2020 Strategic Vision/Master Plan and documents showing when that plan was implemented.

Attached as Exhibit EE.

- E. Documents describing the Adjuncts with Excellence program and documents showing when those plans were implemented.

Attached as Exhibit FF.

- F. Documents showing any other benefits for which adjunct professor are eligible including matching programs, and new formulas for addressing the calculation of adjunct hours as discussed by Ms. Bomba during the meeting with adjuncts on December 16, 2013, described above, and documents showing when those plans were implemented.

Attached as Exhibit FF.

- G. Document describing the “new training opportunities” for which adjuncts were eligible as described in the January 21, 2014, email discussed above and documents showing when those training opportunities were created and implemented.

Attached as Exhibit GG.

- H. Documents describing the University’s “Compensation Task Force” and documents showing when that task force was created.

Attached as Exhibit DD.

#### IV. CONCLUSION

The University has acted appropriately and lawfully at all times leading up to and during the union campaign. It never improperly solicited grievances, expressly or impliedly promised benefits, threatened to withdraw, withhold, or remove benefits, engaged in surveillance, promulgated a no-solicitation rule, or retaliated against anyone. The documentary evidence and common sense exonerates the University. In light of these facts, the charges should be dismissed without further proceeding and the ballots should be counted so that the election can be certified.

DATED: March 11, 2014

MUSICK, PEELER & GARRETT LLP

By: \_\_\_\_\_

Jon C. McNutt  
Attorneys for Employer  
THE UNIVERSITY OF LA VERNE



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