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SANTA BARBARA  
WESTLAKE VILLAGE

December 20, 2013

**VIA E-MAIL AND FACSIMILE**

Olivia Garcia  
Regional Director  
National Labor Relations Board, Region 21  
888 South Figueroa Street, 9th Floor  
Los Angeles, CA 90017-5449

Re: University of La Verne – Request for Amended Decision and Direction of  
Election  
(Case No. 21-RC-115880)

Dear Ms. Garcia:

The University of La Verne has received the Board's Decision and Direction of Election, dated December 17, 2013. While the University is not disputing the Decision as to the unit definition through this letter,<sup>1</sup> we wish to raise an issue which was largely overlooked in the Decision – the eligibility formula.

Under Direction of Election, in subsection A, eligibility to vote is granted to “those in the unit who were employed during the payroll period ending immediately before the date of th[e] Decision...”, or the payroll period ending December 15. This formula is not appropriate for the University for the following reasons:

First, the Fall 2013 Term ended in November. Most part-time faculty who worked during the Fall 2013 Term would be rendered ineligible to vote, since their names would not appear on the University's payroll in December. The “approximately 250 employees in the unit” would therefore be drastically reduced. The Decision's formula would also unfairly disenfranchise individuals who were/are contracted to work in other terms/semesters.

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<sup>1</sup> The University is presently considering its right to request review.

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Second, the formula in the Decision does not comport with the Board's decision in *Pacific Lutheran University and Service Employees International Union, Local 925* (Case 19-RC-102521). Due to the nature of episodic work performed by contingent faculty in higher education, the Board in *Pacific Lutheran* held that the eligibility formula must include those who have an ongoing relationship with the school. "...I find it appropriate to establish an eligibility formula that will ensure that the voters herein have a continuing interest in employment" *Id.*, pg. 29. The eligible voters therefore included "contingent faculty who have received appointments or contracts to teach at least one course in at least two consecutive years...."

Applied to the present matter, eligible voters would include part-time faculty in the defined unit who taught, are teaching, or will teach at least two consecutive years of the following fiscal years/terms/semesters: 2011-2012, 2012-2013, and Fall 2013 and Spring or Winter of 2014.

Neither the Decision nor the Union's post-hearing brief discuss *Pacific Lutheran* – a case which was prominently cited in the University's brief. Moreover, the Union's post-hearing brief is silent on the eligibility formula entirely. For these reasons, the University believes that Subsection A of the Decision was issued in error and should be amended.

Very truly yours,

Jon C. McNutt  
for MUSICK, PEELER & GARRETT LLP

cc: David Selder  
John Hatem  
Glenn Rothner

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bcc: Devorah Lieberman  
Jody Bomba

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