

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

GRAND CANYON UNIVERSITY

and

EDMOND BARDWELL, an Individual

and

JOHN YOUNG III, an Individual

and

SHELLY CAMPBELL, an Individual

and

GLORIA JOHNSON, an Individual

Case 28-CA 22938

Case 28-CA-23035

Case 28-CA-23038

Case 28-CA-23336

**RESPONDENT'S CROSS-EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S
OCTOBER 21, 2011 DECISION**

Pursuant to Section 102.46 (e) of the Rules and Regulations of the National Labor Relations Board (“NLRB”), Respondent Grand Canyon University (hereafter “GCU” or “Respondent”) takes exceptions to the Decision of the Administrative Law Judge Gregory Z. Meyerson (the “ALJ”), dated October 21, 2011, in this matter, as follows¹:

¹ Citations to Administrative Law Judge Gregory Z. Meyerson’s October 21, 2011 Decision will in the form of “AJLD at p. ____.”

1. To the ALJ's finding that Rhonda Pigati testified that "Rebecca Garrett, Brad Bender, and Minal Padagaonkar, grad team enrollment counselors, were all vocal in expressing concerns about leads and other issues..." [ALJD at p. 6:37039]

2. To the ALJ's finding that Campbell, Bardwell and Johnson's complaints about workplace issues, such as the quality of leads and quotas, were distinguishable in any way from the complaints made by other enrollment counselors at GCU. [ALJD at p. 7:5-6; 39:5-6]

3. To the ALJ's finding that GCU violated Section 8(a)(1) of the NLRA by promulgating an unlawful rule prohibiting employees from talking with each other regarding their terms and conditions of employment based on oral statements made by managers to Campbell on December 16, 2009. [ALJD at p. 30:41-45]

4. To the ALJ's conclusion that GCU violated Section 8(a)(1) by applying its Electronic Communications Policy disparately to prohibit employee emails that related to GCU's policy on leads. [ALJD at p. 28:46-50]

5. To the ALJ's conclusion that the General Counsel established a *prima facie* showing that Campbell's protected concerted activity was a motivating factor in GCU's decision to terminate her employment. [ALJD at 39]

6. To the ALJ's finding that the knowledge and awareness of the Enrollment Counselor Managers and any other lower level manager of the protected concerted activities of Campbell, Bardwell and Johnson should be "considered to be imputed to and

possessed by the Respondent as an institution” and, in particular, imputed to decisionmaker, Sarah Boeder. [ALJD at 40]

7. To the ALJ’s finding that Campbell’s forwarding of a January 20, 2010 “sarcastic e-mail” was mentioned in her Termination Request form “as an another example of misconduct on Campbell’s part.” [ALJD at p. 12:25-30]

8. To the ALJ’s finding that “the General Counsel has offered sufficient evidence to meet his burden of establishing that Campbell’s discharge was in part retaliation for her protected concerted activity in forwarding an email to a fellow counselor that criticized the University’s policy on the transfer of leads for international students.” [ALJD at p. 41]

9. To the ALJ’s finding that “the General Counsel has made a *prima facie* showing that his protected concerted activity was a motivating factor in the Respondent’s decision to fire” Bardwell. [ALJD at p. 46]

10. To the ALJ’s finding that the “close proximity” between Bardwell’s “most vocal and heated discussions with management over issues of concern to the grad team” and his termination is sufficient evidence to establish a nexus between the two events. [ALJD at p. 46]

11. To the ALJ’s finding that Ray Akers admitted “telling Johnson that it was okay for her to make the changes to Miller’s transcript request, not once, but twice on July 15.” [ALJD at p. 53:42-44]

12. To the ALJ's finding that Ray Akers "has testified untruthfully in an effort to disguise his 'mistake,' and to support his superiors in their desire to terminate Johnson." [ALJD at p. 54:34-36]

13. To the ALJ's finding that Ray Akers changed his story concerning his interaction with Johnson relating to the Transcript Request Form, let alone "when his superiors began to question his conduct." [ALJD at p. 53:47-50]

14. To the ALJ's finding "that the General Counsel has made a *prima facie* showing that Johnson's protected concerted activity was a motivating factor in the Respondent's decision to fire her." [ALJD at p. 51]

15. To the ALJ's finding that Johnson's participation in a meeting in mid-July 2010 with Chanelle Ison and other members of the grad team constituted evidence sufficient to establish a nexus between her protected concerted activity and her termination. [ALJD at p. 51] And further, to the ALJ's finding that Johnson's termination was a "direct result of her participation in registering complaints with management at [the mid-July 2010] meeting." [ALJD at p. 55]

16. To the ALJ's finding that GCU's reason for Johnson's termination was a "pretext" and that the "real motive behind the Respondent's conduct in terminating Johnson was in retaliation for her protected concerted activity." [ALJD at p. 54]

17. To the content of the proposed notice (the “Notice”) attached as the “Appendix” to the ALJ’s Decision to the extent it goes beyond the remedies authorized by the NLRA. In particular, Respondent objects to the paragraph of the Notice that states:

You have the right to join with your fellow employees in protected concerted activities. These activities include discussing working conditions among yourselves, forming a union, and making common complaints about your wages, hours, and other terms and conditions of employment, including complaints regarding the quality of leads given to enrollment counselors, quotas enrollment counselors must meet, and degree programs available in which to enroll students.

DATED: December 9, 2011

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CERTIFICATE OF SERVICE

I hereby certify that a copy of RESPONDENT'S CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S in Cases 28-CA-22983, et al., was served by **E-Gov, E-Filing, E-mail and U.S., Mail on December 9, 2011, on the following.**

Via E-Gov, E-Filing to:

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