

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

EAST-WEST UNIVERSITY, INC.

and

**Cases 13-CA-089478
13-CA-092290**

**UNITED ADJUNCT FACULTY
ASSOCIATION AT EAST-WEST
UNIVERSITY, IEA-NEA**

DECISION AND ORDER

Statement of the Cases

On September 4, 2013, East-West University, Inc. (the Respondent), United Adjunct Faculty Association at East-West University, INEA-NEA (the Charging Party or Union), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

Findings of Fact

1. The Respondent's business

At all material times, the Respondent, with an office and place of business in Chicago, Illinois, herein called the Respondent's facility, has been engaged in the business of providing higher education.

During the calendar year preceding September 4, 2013, a representative period, the Respondent, in conducting its business operations described above, derived gross revenues, excluding contributions which, because of limitation by the grantor, are not available for operating expenses, in excess of \$1 million.

During the calendar year preceding September 4, 2013, a representative period, the Respondent purchased and received goods and materials valued in excess of \$5,000 directly from points located outside the State of Illinois.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The labor organization involved

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that the Respondent, East-West University, Inc., 816 S. Michigan Ave., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees to fail to re-assign them to classes because of the Respondent's belief that they have engaged in activities on behalf of the United Adjunct Faculty Association at East-West University, IEA-NEA (the Union), and/or protected concerted activities.

(b) Threatening or impliedly threatening employees with unspecified reprisals because of the Respondent's belief that they have engaged in Union and/or protected concerted activities.

(c) Interfering with employees' exercise of Union and/or protected concerted activities.

(d) Refusing to consider for assignment of class(es) or failing to assign Curtis Keyes to class(es) for which he is qualified, or engaging in any other manner of discrimination in regard to the hire or tenure of employment or any other term or condition of employment of Curtis Keyes, in order to discourage membership in the Union and to discourage employees from participating in the investigation and litigation of unfair labor practice charges.

(e) Refusing to consider for assignment of class(es) or failing to assign Elvert Howard to class(es) for which he is qualified, or engaging in any other manner of discrimination in regard to the hire or tenure of employment or any other term or condition of employment of Elvert Howard, in order to discourage membership in the Union and to discourage employees from participating in the investigation and litigation of unfair labor practice charges.

(f) Failing and refusing to provide information requested by the Union that is relevant to the Union's performance as the exclusive collective-bargaining representative of the unit.

(g) Failing to meet and discuss changes in employees' wages, hours, and working conditions, such as access to the faculty portal, without meeting and discussing said change(s) with the Union.

(h) In any other manner interfering with its employees in the exercise of their rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within the next academic school quarter following the date of the Board's Order, consider Elvert Howard and Curtis Keyes for future teaching opportunities in a non-discriminatory manner, and in doing so, for Elvert Howard, Curtis Keyes and for all other adjunct faculty, rely on the following adjunct faculty criteria as agreed to by the Respondent and the Union during the course of bargaining (subject to any changes agreed to in the future between the Respondent and the Union during the course of collective bargaining):

1. Educational qualifications of the instructor;
2. Need for specialization and/or pedagogy;
3. Documented teaching effectiveness;
4. Credentials and professional experience;
5. Prior teaching experience in the subject matter of the course; and
6. Staffing and scheduling needs.

(b) Make whole the following employees for any loss of pay they may have suffered by reason of the alleged discrimination against them, by payment to them in the amount set opposite their names:

Elvert Howard	\$5,100.00
Compounded Interest, as of the date of settlement	165.00
Total for Elvert Howard	\$5,265.00

Curtis Keyes	\$6,800.00
Compounded Interest, as of the date of settlement	211.00
Total for Curtis Keyes	\$7,011.00

The Respondent will make appropriate withholdings for each named employee. No withholdings should be made from the interest portion of the backpay. The Respondent will also file a report with the Social Security Administration allocating the payment(s) to the appropriate time periods.

The Respondent is also responsible for additional payments to reimburse the discriminatees for amounts equal to the difference in taxes owed by them upon receipt of lump sum backpay payments and the taxes which would have been owed by them if there had been no discrimination.

The Respondent is also required to submit the appropriate documentation to the Social Security Administration as set forth in IRS Publication 975 so when backpay is paid to the discriminatees, it will be allocated to the appropriate calendar quarters.

(c) Provide the Union with the following information it requested on September 4, 2012, without the necessity of the Union making a new request:

- (i) The complete interviews with Professor Keyes that have been utilized in the investigation of his conduct by the University;
- (ii) All comments, communications, or other forms of information – written or verbal – that have been relied upon in the University’s investigation of Professor Keyes’ conduct; and
- (iii) Any proof, including signed receipts, indicating that the adjunct faculty has received copies of the Employee Handbook cited in Mr. Schroeder’s July 16, 2012 letter to Professor Keyes.

(d) Bargain with the Union regarding any changes to access to the faculty portal.

(e) Within 14 days of service by the Region, post at its facility at 816 S. Michigan Avenue, Chicago, Illinois, including all places where notices to members are customarily posted (including but not limited to the bulletin board outside the Assistant to Provost Jain’s office), copies of the attached Notice. Copies of the notice on forms provided by Region 13, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including its main office/faculty lounge and all other places where notices to employees are customarily posted. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Mail to the Regional Director for Region 13 signed copies of said notice as directed by the Regional Director’s designee.

(g) At the upcoming Fall 2013 Adjunct Faculty Orientation, an agent of the Respondent shall read the Notice aloud in its entirety to all attendees of the Fall 2013 Adjunct Faculty Orientation. The Respondent shall notify Compliance Officer Thomas Porter, designee of Region 13, in writing, at least one week in advance of the Fall 2013 Adjunct Faculty Orientation so that Region 13 may have a designee physically present to witness the reading of the Notice.

(h) Post a copy of the Notice on its intranet and keep it continuously posted there for 60 consecutive days from the date it was originally posted. The Respondent will send an e-mail to the Region's Compliance Officer at Thomas.Porter@nlrb.gov with a link to the electronic posting location on the same day at the posting. If passwords or other log-on information are required to access the electronic posting, the Respondent agrees to provide such access information to the Region's Compliance Officer.

(i) E-mail a copy of the signed Notice to all adjunct faculty who worked at the Respondent's campus during any quarter since Spring Quarter 2011 at the Respondent's 816 S. Michigan Avenue, Chicago, Illinois campus. The Respondent will also forward a copy of that e-mail to the Region's Compliance Officer.

(j) Notify the Regional Director, in writing, within 21 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C., December 11, 2013.

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

Nancy Schiffer, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees that we will not re-assign them to classes because of our belief that they have engaged in activities on behalf of or in support of the United Adjunct Faculty Association at East-West University, IEA-NEA (Union) or because of our belief that they have engaged in any protected concerted activities.

WE WILL NOT threaten or impliedly threaten employees with unspecified reprisals because of our belief that they have engaged in activities on behalf of or in support of the Union or because of our belief that they have engaged in any protected concerted activities.

WE WILL NOT refuse to consider Elvert Howard for assignment to class(es) or fail to assign Elvert Howard to class(es) for which he is qualified or otherwise discriminate against him in order to discourage membership in the Union and to discourage employees from participating in the investigation and litigation of unfair labor practice charges.

WE WILL NOT refuse to consider Curtis Keyes for assignment to class(es) or fail to assign Curtis Keyes to class(es) for which he is qualified or otherwise discriminate against him in order to discourage membership in the Union and to discourage employees from participating in the investigation and litigation of unfair labor practice charges.

WE WILL NOT fail and refuse to provide information requested by the Union that is relevant to the Union's performance as the exclusive collective-bargaining representative of the Unit.

WE WILL NOT refuse to meet and discuss in good faith with your Union any proposed changes in wages, hours and working conditions, such as access to the faculty portal, before putting such changes into effect.

WE WILL NOT in any other manner interfere with you exercising your rights under Section 7 of the Act.

WE WILL, within the next academic school quarter following the date of the Board's Order, consider Elvert Howard and Curtis Keyes for assignment to future teaching opportunities in a non-discriminatory manner, and, in doing so, will rely on the following adjunct faculty criteria as agreed to by the Respondent and the Union during the course of bargaining (subject to any changes agreed to in the future between the Respondent and the Union during the course of collective bargaining):

1. Educational qualifications of the instructor;
2. Need for specialization and/or pedagogy;
3. Documented teaching effectiveness;
4. Credentials and professional experience;
5. Prior teaching experience in the subject matter of the course; and
6. Staffing and scheduling needs.

WE WILL, in a non-discriminatory fashion, rely on the above six criteria (subject to any changes agreed to in the future between the Respondent and the Union during the course of collective bargaining) when making all class assignment decisions regarding adjunct faculty.

WE WILL make Elvert Howard whole for any loss of pay he may have suffered by reason of the alleged discrimination against him, by payment to him in the amount of \$5,159.00, as set forth in the Formal Settlement Agreement.

WE WILL make Curtis Keyes whole for any loss of pay he may have suffered by reason of the alleged discrimination against him, by payment to him in the amount of \$6,857.00, as set forth in the formal Settlement.

WE WILL provide the Union with the following information it requested on September 4, 2012, without the necessity of the Union to make a new request: (1) the complete interviews with Professor Keyes that have been utilized in the investigation of his conduct by the University; (2) all comments, communications, or other forms of information – written or verbal – that have been relied upon in the University's investigation of Professor Keyes' conduct; and (3) any proof, including signed receipts, indicating that the adjunct faculty have received copies of the Employee Handbook cited in Mr. Schroeder's July 16, 2012 letter to Professor Keyes.

WE WILL, upon request, bargaining in good faith with the Union as the exclusive representative of the following appropriate Unit of our employees:

All regular part-time faculty employees employed by the Respondent at its facility presently located at 816 S. Michigan Avenue, Chicago, Illinois; excluding all full-time faculty, non teaching staff, office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL, if requested by the Union, bargain regarding any or all changes to access to the faculty portal that we made without bargaining with the Union.

EAST-WEST UNIVERSITY, INC.

(Employer)

Dated: _____ By: _____
(Representative) (Title)