

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 721,**

CASE NO. 31-RC-164868

Petitioner,

and

**UNIVERSITY OF SOUTHERN
CALIFORNIA,**

Employer.

**UNIVERSITY OF SOUTHERN CALIFORNIA'S
REQUEST FOR REVIEW OF ORDER DENYING EMPLOYER'S MOTION TO
REOPEN THE RECORD AND FOR RECONSIDERATION,
AND BRIEF IN SUPPORT THEREOF**

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REGULATIONS

29 CFR § 102.671

I. REQUEST FOR REVIEW

Pursuant to 29 CFR § 102.67, the University of Southern California (“USC”) hereby requests review of the Regional Director’s (“RD”) Order Denying Employer’s Motion to Reopen the Record and For Reconsideration in Case No. 31-RC-164868 (the “Order”) (attached hereto as Exhibit A). The Region issued the Order on May 26, 2016 and, therefore, this request for review is timely. This request relates to USC’s Roski School of Art and Design only. To the extent the Order also affects Case No. 31-RC-164864 (Dornsife College of Arts and Sciences), USC is not seeking review at this time, because there has been no final disposition by the Regional Director of that case.

There are compelling reasons for the Board to grant review of the Order, specifically: (1) the RD’s Order on substantial factual issues is clearly erroneous on the record, and such errors have prejudicially affected USC’s rights, and (2) substantial questions of law and policy are raised by this case because the RD’s Order departed from officially reported Board precedent.

The Board should consolidate this request for review with USC’s currently-pending Request for Review of the RD’s Decision and Direction of Election in Case No. 31-RC-164868 (the “Direction of Election”), grant USC’s Motion to Reopen the Record and for Reconsideration, and find that USC’s faculty are managerial employees under the Act. The Union’s petition should then be dismissed.

II. BRIEF IN SUPPORT OF REQUEST FOR REVIEW

A. INTRODUCTION AND BACKGROUND

At issue in the pre-election hearing was whether USC’s non-tenure-track faculty make decisions as to matters of significance in the five key areas identified by the Board in *Pacific Lutheran Univ. & SEIU, Local 925*, 361 NLRB No. 157 (2014). USC presented robust evidence that all of its faculty --- tenured, tenure-track, and non-tenure-track alike --- participate in its shared faculty governance system of University-wide faculty committees. Through those

committees, faculty members make decisions on University policy in *all five Pacific Lutheran* areas: academic programs, enrollment management, finances, academic policy, and personnel decisions.

The SEIU contended that the work of non-tenure-track faculty in the area of academic programs is merely technical and clerical, not substantive decision-making. For that argument, the SEIU relied on the testimony of Professor Kate Levin, a non-tenure-track faculty member who sits on a subcommittee of the University Committee on Curriculum (UCOC). In her pre-election testimony, Professor Levin characterized the UCOC's role as **"technical and clerical,"** requiring faculty to do nothing more than check to see that "there are enough contact hours between professors and students," and that the "[course credits] match the contact hours." Pre-Election Tr. 663:13-664:1; 669:16-21.¹ When asked on direct examination by the Union's counsel about the extent of her decision-making on the UCOC, she testified: **"I wasn't providing substantive feedback [on courses]. . . . I've never made any substantive decisions that have, you know, asked me to draw on any real judgment."** Pre-Election Tr. 665:2-20 (emphasis added).

The SEIU urged the RD to rely on this testimony (the only evidence it offered as to the UCOC), citing it in the briefing and arguing "that members of the UCOC exercise decision-making authority similar to that of clerical staff, not the professional expertise which is indispensable to the formulation and implementation of academic policy." SEIU Post-Hearing Brief, filed December 16, 2015, at p. 38 (quoting *NLRB v. Yeshiva University*, 444 U.S. 672, 689 (1980)).

The Regional Director *did* rely on Professor Levin --- finding that "[t]he role of the UCOC subcommittees seems to be simply to verify that the proposals meet pre-determined criteria, such as having a sufficient number of contact hours." Direction of Election at p. 33.

¹ All cited testimony from the pre-election hearing is attached as **Exhibit B**, and cited as "Pre-Election Tr. [page]:[line]." All cited testimony from the *post*-election hearing is attached as **Exhibit C**, and cited as "Post-Election Tr. [page]:[line]."

Because the UCOC is arguably the most important faculty committee under the standards set by the Board in *Pacific Lutheran*, this finding drove the result in the pre-election case.

The election yielded different results in different units. In the Roski School, the SEIU won the vote and was certified; USC then filed a request for review of the Decision and Direction of Election. The SEIU opposed USC's request for review, emphasizing in its brief Professor Levin's pre-election testimony that non-tenure-track faculty are supposedly deciding nothing more than technical and clerical matters. *See* SEIU's Opposition to Employer's Request for Review of Decision and Direction of Election, filed March 10, 2016, at pp. 7-8, 20. USC's request for review is still pending before the Board.

In the Dornsife College, the SEIU failed to secure a majority of votes and filed objections. During the objections hearing, the SEIU took a starkly different position on faculty decision-making. Far from arguing that non-tenure-track faculty are powerless minions, the SEIU suddenly claimed that non-tenure-track faculty have a vital role in USC governance through such committees and that this power is an important benefit. Professor Levin testified again. But this time she testified that she and the other UCOC members actually *do* decide USC's curriculum, and she conceded her influence in deciding what courses are offered. In her words: **"I enjoy having a say in --- you know, in what courses are offered to students. I enjoy chiming in on discussions that my fellow committee members are having about any given course or any given [course] modification** because it's often the case that a number of people will comment on a [course] proposal . . ." Post-Election Tr. 193:22-194:8 (emphasis added). She testified that her role on the UCOC gives her "a window into **how university curricula are shaped.**" Post-Election Tr. 192: 18-193:3 (emphasis added). And she admitted that her work on the UCOC is important work. Post-Election Tr. 246:3-5.

Compared to Professor Levin's earlier testimony, this was nothing short of a total reversal. Had she been that candid in the pre-election hearing, there would necessarily have been a different result. After all, faculty decision-making about academic programs is the first of the primary areas of decision-making and, *standing alone*, it is enough to make faculty managerial

under *Pacific Lutheran*. Professor Levin’s new testimony shows that USC should have prevailed on this issue at the pre-election hearing.

For these reasons, USC moved to reopen the pre-election hearing record to receive Professor Levin’s post-election testimony, and for reconsideration of the Decision and Direction of Election based on that new evidence.² But the RD denied USC’s motion based on findings and reasoning that are clearly erroneous. That decision should be reversed.

B. THE REGIONAL DIRECTOR’S DENIAL OF USC’S MOTION IS ERRONEOUS

1. The Regional Director Wrongly Found That Professor Levin’s Post-Election Testimony Is Not Contrary To Her Pre-Election Testimony.

The RD found that “none of Professor Levin’s testimony relied upon by the Employer is directly contrary to her pre-election testimony.” Order at p. 2, ¶ 2. The RD is plainly mistaken, as a side-by-side comparison of Professor Levin’s pre- and post-election testimony shows:

<p>Professor Levin, <i>pre</i>-election: “I wasn’t providing substantive feedback [on courses]. . . . I’ve never made any substantive decisions that have, you know, asked me to draw on any real judgment.” Pre-Election Tr. 665:2-20 (emphasis added).</p>	<p>Professor Levin, <i>post</i>-election: “I enjoy having a say in --- you know, in what courses are offered to students. I enjoy chiming in on discussions that my fellow committee members are having about any given course or any given [course] modification. . . .” Post-Election Tr. 193:22-194:8 (emphasis added).</p>
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<p>Professor Levin, <i>pre</i>-election: “[T]he nature of the [UCOC’s] work is to make sure, you know, things like there are enough contact hours between professors and students, to make sure that the credits, you know, of the course match the contact hours, to make sure that, you know, the prerequisites of a given course match up with the specifications in the curriculum handbook, that sort of thing.” Pre-Election</p>	<p>Professor Levin, <i>post</i>-election: “[W]e make recommendations about whether new courses . . . or changes to existing courses should go through.” Post-Election Tr. 246:20-247:1 (emphasis added).</p>
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² That same day, USC gave notice of its motion to the Board in light of its pending request for review of the Direction of Election.

Tr. 663:13-664:1 (emphasis added).

<p>Professor Levin, <i>pre</i>-election: “The work of [the UCOC] -- yeah, you know, mostly we’re kind of reviewing these [course] proposals for kind of technical and clerical matters.” Pre-Election Tr. 669:16-21 (emphasis added).</p>	<p>Professor Levin, <i>post</i>-election: “[I joined the UCOC because] I was interested in getting a window into how university curricula are shaped.” Post-Election Tr. 192:18-193:3 (emphasis added). “Q: Do you regard your work on the curriculum committee as important? A: I do.” Post-Election Tr. 246:3-5 (emphasis added).</p>
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Professor Levin’s pre-election and post-election statements are *irreconcilable*. The RD’s finding that the statements are not contrary is plain error.

2. **The Regional Director Reasoned That It Is “Irrelevant” That Professor Levin Gave Testimony That Was More Favorable To USC In The Later Proceeding; That Makes No Sense.**

The RD reasoned that the fact “[t]hat [Professor Levin’s] specific testimony in the post-election hearing may be more favorable to the Employer’s position on the issue of managerial authority is irrelevant.” Order at p. 2, ¶ 2. This makes no sense. How can it be irrelevant that the union’s *sole* witness on a *case-dispositive* issue, and on whom the RD *expressly relied* in ruling against USC at the pre-election hearing, *changed* her testimony in a later *Board* proceeding in a way that *proves USC’s pre-election case*? The RD’s rejection of Professor Levin’s changed testimony is clearly erroneous and cannot stand.

3. **The Regional Director Wrongly Found That Professor Levin’s Post-Election Testimony Would Have Been “Available” To USC At The Pre-Election Hearing If USC Had Cross-Examined Her Harder.**

The RD found that “Professor Levin’s [post-election] testimony does not constitute newly discovered evidence” because USC “could have [at the pre-election hearing] questioned her further or asked the same specific questions asked of her in her post-election examination.” Order at p. 2, ¶ 2. But the RD has failed to account for what *caused* Professor Levin to give

different testimony at the post-election hearing: the Union's goal had changed. In the *pre*-election hearing, the Union was contending that the faculty members at issue were non-managerial. In that context, making the faculty's role in governance sound powerless was helpful to the Union's cause. And the Union presented Professor Levin for that purpose. In the *post*-election hearing, the Union was contending that USC's comments about possible changes to faculty governance following unionization were objectionable "threats." In that context, making faculty governance sound powerless was *unhelpful*. It was the Union's change in purpose that led to the change in Professor Levin's testimony. Given that, no amount of *additional* cross-examination at the pre-election hearing would have changed anything. It certainly would not have caused her to admit the importance and caliber of her work on the UCOC --- after all, that would have been totally contrary to the sworn testimony she had just given. The RD's suggestion that USC could have uncovered Professor Levin's post-election testimony just by cross-examining her harder at the pre-election hearing is just wrong.

4. **The Regional Director Was Wrong To Conclude That Professor Levin's Post-Election Testimony Does Not Require A Different Result On The Election Decision.**

The RD reasoned that Professor Levin's new testimony does not lead to a different result on the question of managerial status because her testimony was "unspecific as to the type of recommendations faculty made about University curricula, how they come to make those recommendations, and what happens to those recommendations once made." Order at p. 2, ¶ 3.

But what matters here is that Professor Levin does, in fact, make recommendations on University curricula, and she now admits that. Given that the RD expressly relied on Professor Levin's earlier testimony to find that faculty serving on the UCOC do *not* make effective recommendations ("I wasn't providing substantive feedback . . . I've never made any

substantive decisions”), Professor Levin’s new candor undermines the very basis for the RD’s Decision. That *compels* a different result.³

5. The Regional Director Found USC’s Motion Was “Untimely,” But There Is Zero Basis --- Factually Or Legally --- For That Conclusion.

The RD found that USC’s motion to reopen and for reconsideration was untimely. Not so. The Board’s Rules and Regulations require only that the motion be brought promptly, and USC’s certainly was.

On this point, the chronology is helpful: The parties were in trial on the SEIU’s objections for three full days, from February 23-25, 2016. The parties requested and were granted the right to file post-hearing briefs. For the 10 days that followed, USC’s sole focus was --- rightly --- preparation of its robust post-hearing brief. Both parties’ post-hearing briefs were filed and served on Monday March 7, 2016. USC analyzed the Union’s brief right away, and it discovered that the Union was attempting to introduce a mathematical calculation that was not raised at the hearing and that was not based on any evidence in the record. As a result, USC moved to strike that portion of the Union’s brief (or, in the alternative, asked the Hearing Officer to reopen the record to admit the needed evidence to set the record straight).⁴ USC promptly filed those moving papers on March 15, 2016. The very next day, USC turned to the task of analyzing Professor Levin’s testimony at the objections hearing, and comparing it to the record evidence in the pre-election hearing, as well as analyzing the testimony of the union’s other witnesses for the same issue. USC completed that process, and prepared and filed its moving

³ The specifics that the RD says she found lacking in Professor Levin’s latest testimony were supplied at the pre-election hearing by USC’s witnesses. Indeed, Professor Elizabeth Graddy testified in great detail about the UCOC’s process of reviewing curricula, and she provided examples. She also testified to how the UCOC’s recommendations are implemented. See USC’s Request for Review of Decision and Direction of Election at pp. 21-24 (and evidence cited therein). So, there is no basis for the RD’s claim that these details are missing from the record.

⁴ USC had to file this motion when it did. If it had not, the Union would certainly have contended later on appeal that the USC waived its objection.

papers, within the next 15 days. Given this timing --- all of which the Region knew --- there is absolutely no basis for suggesting that USC was dilatory.

Moreover, even if USC *had* just sat on its hands for the month between the close of the hearing and the filing of its motion, that would not make the motion untimely. Indeed, the Board has found similar (and *longer*) timing to be entirely appropriate. *See, e.g., C.F. Taffe Plumbing Co., Inc.*, 2011 WL 3898011 at *1 (NLRB Sept. 1, 2011) (Pearce; Becker; Hayes, dissenting) (granting motion to reopen and directing ALJ to admit new evidence where motion to reopen was filed more than two months after the close of the hearing, and finding that was sufficiently prompt); *YWCA of Metro. Chicago*, 235 NLRB 788 (1978) (Petitioner's motion for reconsideration and to reopen the record was sufficiently prompt when filed one month after new evidence --- contrary witness testimony --- was presented in a later, separate Board proceeding). *See also J.P. Stevens & Co., Inc.*, 246 NLRB 1164 (1979) (motion to reopen the record filed more than 2 months after issuance of Decision was timely where Respondent had alerted the parties three days before the Decision was issued that a motion would be filed, and where there was no prejudice to the other party).

III. CONCLUSION

The RD's denial of USC's motion was erroneous. Because decision-making over academic programs is a primary area of decision-making under *Pacific Lutheran*, Professor Levin's new testimony is powerful evidence of managerial status. Professor Levin's post-election testimony (the relevant transcript pages of which are attached hereto) should be admitted into the record. This new testimony, along with the other record evidence, should lead the Board

to conclude that USC's non-tenure-track faculty, like all USC faculty, are managerial and that no question of representation exists.

DATED: June 9, 2016

PAUL HASTINGS LLP
J. AL LATHAM, JR.
CAMERON W. FOX

By:  _____
CAMERON W. FOX

Attorneys for Respondent
UNIVERSITY OF SOUTHERN CALIFORNIA

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

UNIVERSITY OF SOUTHERN CALIFORNIA

Employer

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 721

Case 31-RC-164864 and
31-RC-164868

Petitioner

**ORDER DENYING EMPLOYER'S MOTION TO REOPEN THE RECORD
AND FOR RECONSIDERATION**

On March 31, 2016, the Employer filed a motion pursuant to Section 102.65(e) of the Board's Rules and Regulations to reopen the pre-election record in case 31-RC-164864 and 31-RC-164868 to receive new evidence, and for reconsideration of my December 24, 2015 Decision and Direction of Election in light of that new evidence. Subsequently, the Petitioner filed its Opposition to the Employer's motion. The Employer argues that certain post-election testimony by Professor Kate Levin contradicts her testimony in the pre-election hearing, and that this new testimony would compel me to reach a different result with regard to the pre-election matter. The Petitioner contends that the Employer's motion does not meet the standard for reopening the record or for reconsideration, and should be denied.

Section 102.65(e)(1) of the Board's Rules and Regulations states, in relevant part:

A party to a proceeding may, because of extraordinary circumstances, move after the decision or report for reconsideration, for rehearing, or to reopen the record. A motion for rehearing or to reopen the record shall specify briefly the error alleged to require a rehearing or hearing de novo, the prejudice to the movant alleged to result from such error, the additional evidence sought to be adduced, why it was not presented previously, and what result it would require if adduced and credited. Only newly discovered evidence—evidence which has become available only since the close of the hearing—or evidence which the regional director or the Board believes should have been taken at the hearing will be taken at any further hearing.

Section 102.65(e)(2) requires that such motions be filed "promptly on discovery of the evidence sought to be adduced."

The Employer argues that contrary to her testimony in the pre-election hearing that her involvement on the University Committee on Curriculum (UCOC) was merely of a technical or clerical nature, Professor Levin now testifies in the post-election hearing that she enjoys having “a say in . . . what courses are offered,” that she joined the committee to have a “window into how university curricula are shaped,” and that she views her work on the committee as “important.” The Employer also cites Professor Levin’s post-election testimony that the UCOC “makes recommendations about whether new courses . . . or changes to existing courses should go through,” as contradicting her pre-election testimony that her work on UCOC did not require her to use her judgment to make substantive decisions about courses. The Employer argues that this testimony was not known at the time of the pre-election hearing, and that this new testimony necessarily requires a finding that USC’s non-tenure track faculty in the relevant units exercise managerial authority, contrary to my previous decision. This, the Employer contends, constitutes extraordinary circumstances such that the pre-election record should be reopened and reconsidered in light of this new evidence.

I do not find that the Employer has established extraordinary circumstances exist that warrant the reopening of the record. First, I note that the Employer has not provided an explanation as to why this evidence was not adduced in the pre-election hearing. None of Professor Levin’s testimony relied upon by the Employer is directly contrary to her pre-election testimony. That her specific testimony in the post-election hearing may be more favorable to the Employer’s position on the issue of managerial authority is irrelevant. The Employer had the burden in the pre-election hearing to prove the statutory exclusion. The Employer was given the opportunity to cross-examine Professor Levin about her experiences on UCOC and did so. The Employer could have questioned her further or asked the same specific questions asked of her in her post-election examination, but it did not do so when it had the opportunity. Thus, Professor Levin’s testimony does not constitute newly discovered evidence.

Even if Professor Levin’s post-election testimony did constitute new evidence, I do not find that it would require me to reach a different result on the question of these faculty members’ managerial authority. The testimony adduced from Professor Levin is unspecific as to the type of recommendations faculty make about University curricula, how they come to make those recommendations, and what happens to those recommendations once made. Furthermore, as the Employer correctly argued in the pre-election hearing, Professor Levin’s subjective opinions or valuations of the work she does on UCOC are irrelevant to the question of managerial status. In other words, her enjoyment of, or the importance she places on her participation in the committee does not establish that non-tenure track faculty exercise managerial decision-making with regard to USC’s academic programs, as the Employer argues. This evidence is of little to no probative value and would not change the result I reached in my pre-election decision.

Finally, I do not find that the Employer’s motion was filed “promptly on discovery of the evidence sought to be adduced.” Professor Levin concluded her post-election testimony on February 24, 2016. Transcripts were available to the parties by February 26, 2016. Yet, the Employer did not file its motion to reopen the record until March 31, 2016. The Employer provides no explanation for the month-long delay, and I see no basis for it. Therefore, I do not find that the motion was timely filed.

Accordingly, based on all the foregoing reasons, I deny the Employer's motion to reopen the record and for reconsideration.

Dated: May 26, 2016

A handwritten signature in cursive script, appearing to read "Mori Rubin", is written above a horizontal line.

MORI RUBIN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 31
11500 W Olympic Blvd Ste 600
Los Angeles, CA 90064-1753

EXHIBIT B

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 31

In the Matter of:

University of Southern
California,

Case No. 31-RC-164864
31-RC-164868
31-RC-164871

Employer,

and

Service Employees
International Union, Local
721,

Petitioner.

Place: Los Angeles, California

Dates: December 10, 2015

Pages: 596 through 731

Volume: 4

OFFICIAL REPORTERS

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1 MS. MYERS: Thank you. Petitioner calls Professor Kate
2 Levin.

3 HEARING OFFICER PEREIRA: Ms. Levin -- or Professor Levin,
4 please raise your right hand.
5 Whereupon,

6 KATE LEVIN
7 having been duly sworn, was called as a witness herein and was
8 examined and testified as follows:

9 HEARING OFFICER PEREIRA: Please state and spell your name
10 for the record.

11 THE WITNESS: My first name is Kate, K-A-T-E. My last
12 name is Levin, L-E-V-I-N.

13 DIRECT EXAMINATION

14 Q BY MS. MYERS: Good afternoon, Professor Levin.

15 A Good afternoon.

16 Q Professor, are you currently employed?

17 A Yes.

18 Q Who is your employer?

19 A The University of Southern California.

20 Q And what is your title?

21 A I'm a part-time lecturer.

22 Q And what school do you teach?

23 A Dornsife.

24 Q And what program do you teach?

25 A In the writing program.

1 provided it? I know you received it directly from the staff
2 person, but do you know who drafted it? Do you have an idea?

3 THE WITNESS: I don't actually. I don't.

4 HEARING OFFICER PEREIRA: Okay. And, again, could you
5 just tell me what the purpose was? Was it to assist you and
6 other committee members in drafting proposals?

7 THE WITNESS: Not in drafting proposals but in reviewing
8 proposals that had been drafted by others.

9 HEARING OFFICER PEREIRA: Okay.

10 THE WITNESS: Yes.

11 HEARING OFFICER PEREIRA: All right. Well, thank you.

12 THE WITNESS: Sure.

13 Q BY MS. MYERS: Professor, can you describe in more detail
14 what your role is on this committee in terms of reviewing
15 proposals that are drafted by others?

16 A Sure. So the chair of the committee assigns our
17 subcommittee members, you know, a few tasks, right? We are --
18 we might be tasked with reviewing a new course. We might be
19 tasked with reviewing changes to an existing course or a
20 program or a certificate.

21 Essentially, the nature of the work is to make sure, you
22 know, things like there are enough contact hours between
23 professors and students, to make sure that the credits, you
24 know, of the course match the contact hours, to make sure that,
25 you know, the prerequisites of a given course match up with the

1 specifications in the curriculum handbook, that sort of thing.

2 Q Okay. Have you received any assignments to review any
3 courses or programs yet?

4 A I have. I've received three assignments.

5 Q Can you describe those assignments?

6 A Sure. One was reviewing a new political science course.
7 It was a graduate level course on research methods. Another
8 was to review a change to a certificate that the law school is
9 offering, and another one was to review a change to a master's
10 program offered by the business school.

11 Q Okay. Let me ask you about the first of those three.

12 With regard to the political science --

13 A Uh-huh, yeah.

14 Q -- do you have any academic training in political science?

15 A I took an undergrad course in political science, but not
16 since then.

17 Q I think the second task that you mentioned was to review a
18 new certificate program in the law school?

19 A Yes.

20 Q Do you have any legal training?

21 A No.

22 Q And your third task was to review a master's degree
23 program in the business school; is that right?

24 A Yes, or a change to an existing program, yes, uh-huh.

25 Q Okay. Do you have any formal training in business?

1 A No.

2 Q Professor, how can you provide substantive feedback on
3 courses or programs that are outside of the area of your
4 academic expertise?

5 A I wasn't providing substantive feedback. Reviewing, you
6 know, these three tasks probably amounted to about 45 minutes
7 of work. As I said --

8 Q Forty-five minutes total, or 45 minutes for each --

9 A Total.

10 Q Okay.

11 A You know, again, you know, some of it is mathematical,
12 just making sure that the contact hours are sufficient to a
13 given course's credits, right. Making sure, you know, for
14 example, for the law school certificate, there's a stipulation
15 in the curriculum handbook that all the prerequisites have to
16 be, you know of a 500 level, right? And some of the
17 prerequisites here were a 200 level, right? So that's
18 something I would flag, but I don't -- I've never made any
19 substantive decisions that have, you know, asked me to draw on
20 any real judgment.

21 Q What is your understanding of the process after you
22 provide your feedback when you've reviewed a new course or
23 program?

24 A Right. It seems that when I approve a program or, excuse
25 me, you know, approve a given task, it then goes on to the

1 us what your work on the committee has been?

2 A Well, it's largely, you know, a group of part-time faculty
3 talking to each other, you know, about our situations, but my
4 sense of it is that the committee's -- excuse me, the
5 subcommittee's powers are very limited. You know, we -- you
6 know, as I said one of the first things that happened is that
7 we sought just data on how many part-time faculty exist at the
8 given schools and we're essentially told no. So, you know,
9 that struck me as a real contradiction. You know, here's a new
10 subcommittee that's formed, you know, to monitor and evaluate
11 part-time faculty affairs at the school, but it seems that, you
12 know, the administration was not willing to provide us with a
13 key piece of what we would need to fulfill our charge. So my
14 sense of our authority and our ability to get things done is
15 that we're quite hampered by that and somewhat limited.

16 Q And with respect to your work on the University Committee
17 on Curriculum, now that you've served a semester on that
18 committee, can you describe what the work of the committee is.

19 A The work of -- yeah, you know, mostly we're kind of
20 reviewing these proposals for kind of technical and clerical
21 matters. You know, as I sort of alluded to before, I was a bit
22 intimidated accepting the invitation to this committee because
23 I, you know, I didn't know if I was sort of qualified to make
24 decisions about, you know, new classes being proposed in other
25 departments, and I didn't know how I would be able to do that

C E R T I F I C A T I O N

1
2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 31, Case Numbers
4 31-RC-164864, 31-RC-164868, 31-RC-164871, University of
5 Southern California and Service Employees International Union,
6 Local 721 at the National Labor Relations Board, Region 31,
7 11500 West Olympic Boulevard, Suite 600, Hearing Room A, Room
8 603, Los Angeles, California 90064 on Thursday, December 10,
9 2015, at 9:35 Am. was held according to the record, and that
10 this is the original, complete, and true and accurate
11 transcript that has been compared to the reporting or
12 recording, accomplished at the hearing, that the exhibit files
13 have been checked for completeness and no exhibits received in
14 evidence or in the rejected exhibit files are missing.

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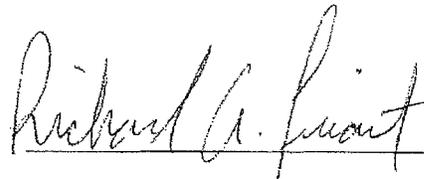
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RICHARD A FRIANT

Official Reporter

EXHIBIT C

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 31

In the Matter of:

University of Southern
California,

Case No. 31-RC-164864

Employer,

and

Service Employees
International Union,
Local 721,

Petitioner.

Place: Los Angeles, California

Dates: February 23, 2016

Pages: 1 through 230

Volume: 1

OFFICIAL REPORTERS

AVTranz
E-Reporting and E-Transcription
7227 North 16th Street, Suite 207
Phoenix, AZ 85020
(602) 263-0885

1 MR. NADURIS-WEISSMAN: Well, let's see. It's a really
2 brief witness.

3 MR. LATHAM: Okay.

4 MR. NADURIS-WEISSMAN: So I think 10:00 a.m. would be
5 fine.

6 MR. LATHAM: All right. Okay.

7 MR. NADURIS-WEISSMAN: Okay.

8 HEARING OFFICER PALENCIA: Off the record.

9 (Off the record at 4:19 p.m.)

10 HEARING OFFICER PALENCIA: Back on the record.

11 Whereupon,

12 KATE LEVIN

13 having been duly sworn, was called as a witness herein and was
14 examined and testified as follows:

15 HEARING OFFICER PALENCIA: Can you please state your name
16 for the record.

17 THE WITNESS: Sure. My name is Kate Levin.

18 HEARING OFFICER PALENCIA: L-E-V-I-N?

19 THE WITNESS: L-E-V-I-N.

20 HEARING OFFICER PALENCIA: Please speak loudly and make
21 sure that you wait for the question to be completed before you
22 answer. Also, make sure you understand the question. If you
23 don't understand the question, say so and ask that it be
24 rephrased.

25 THE WITNESS: Okay.

1 A Yes, I am.

2 Q Let me ask you about the Curriculum Committee. How did
3 you get on this committee?

4 A Uh-huh. I received an invitation letter notifying me that
5 I had been nominated to join the committee, and I received that
6 in I believe it was August of 2015.

7 Q Okay. Do you know how you were selected?

8 A Only that I was nominated by -- I believe it was the
9 Executive Committee.

10 Q The Executive Committee of what, do you know?

11 A I believe it was of the University Committee on
12 Curriculum, although I don't remember if that was the exact
13 language.

14 Q Okay.

15 HEARING OFFICER PALENCIA: Exact language of what?

16 THE WITNESS: Of the body that nominated me to join the
17 committee.

18 Q BY MR. NADURIS-WEISSMAN: Okay. What does the -- what
19 does the Curriculum Committee do?

20 A The Curriculum Committee reviews proposals for new
21 courses. It also reviews proposals for new certificates, new
22 programs at times. And it also reviews modifications to
23 existing courses, programs, certificates.

24 Q And what was your interest in joining this committee?

25 A Uh-huh.

1 Q Or accepting the nomination?

2 A Uh-huh. I was interested in getting a window into how
3 university curricula are shaped. I was interested in getting a
4 look at how other professors design their courses in other
5 disciplines. And I was interested in getting a chance to work
6 with colleagues in other disciplines, other departments.

7 Q And did you receive any financial benefit for
8 participating?

9 A I did.

10 Q And is that the -- is that something we discussed
11 previously with the September 3rd employment contract
12 modification?

13 A Yes.

14 Q Do you -- do you recall how much you receive?

15 A Yes. For the term spanning from September 2015 through
16 April 2016, the compensation is \$752.96.

17 Q Okay. And -- all right. Well, I'll just -- how often has
18 this committee met?

19 A We've met in person once.

20 Q How is the work done?

21 A Most of our work is conducted over email.

22 Q Are you still on this committee?

23 A I am.

24 Q Are you interested in continuing in the future?

25 A I am.

1 Q And why?

2 A Because I enjoy having a say in -- you know, in what
3 courses are offered to students. I enjoy chiming in on
4 discussions that my fellow committee members are having about
5 any given course or any given modification because it's often
6 the case that a number of people will comment on a proposal,
7 and I enjoy seeing how other professors organized their
8 materials, design their classes.

9 Q Okay. Thank you.

10 MR. NADURIS-WEISSMAN: Let me check if I'm -- I'm sorry.
11 I lost track whether Union Exhibit 26 was admitted.

12 HEARING OFFICER PALENCIA: 26 has been admitted into
13 evidence.

14 MR. NADURIS-WEISSMAN: Okay. And I will -- I've marked
15 Union Exhibit 27. I will distribute.

16 Q BY MR. NADURIS-WEISSMAN: Ms. Levin, is this the letter
17 you received that you previously mentioned that -- regarding
18 your agreement to serve on the University Committee on
19 Curriculum?

20 A This is a letter that I received after accepting the
21 invitation to serve on that committee, yes.

22 Q Okay. And the date, do you know if that represents when
23 you received that letter?

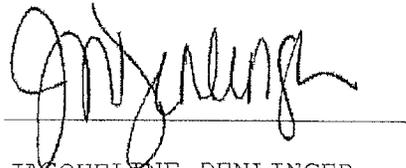
24 A Yes, it does.

25 Q Thank you. The letter says -- the second paragraph states

C E R T I F I C A T I O N

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This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 31, Case Number 31-RC-164864, University of Southern California and Service Employees International Union, Local 721, at the National Labor Relations Board, Region 31, 11500 West Olympic Boulevard, Suite 600, Los Angeles, California 90064, on Tuesday, February 23, 2016, at 9:23 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



JACQUELINE DENLINGER

Official Reporter

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 31

In the Matter of:

University of Southern
California,

Case No. 31-RC-164864

Employer,

and

Service Employees
International Union,
Local 721,

Petitioner.

Place: Los Angeles, California

Dates: February 24, 2016

Pages: 231 through 334

Volume: 2

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7227 North 16th Street, Suite 207
Phoenix, AZ 85020
(602) 263-0885

1 HEARING OFFICER PALENCIA: 34. And they're admitted into
2 evidence.

3 **(Union Exhibit Number 30 through 34 Received into Evidence)**

4 MR. NADURIS-WEISSMAN: Thank you. Shall I get the
5 witness?

6 HEARING OFFICER PALENCIA: Please. And I'm sorry, those
7 were Exhibits 31 through 34, correct? So --

8 MR. NADURIS-WEISSMAN: Including 30 through 34.

9 HEARING OFFICER PALENCIA: Right. 30 through 34, yes. 30
10 to 34 are admitted into the record and then -- so, okay. And
11 let me just remind you that you're still under oath.
12 Whereupon,

13

KATE LEVIN

14 having been previously sworn, was called as a witness herein
15 and was examined and testified as follows:

16

CROSS-EXAMINATION

17 Q BY MR. LATHAM: Good morning, Professor Levin.

18 A Good morning.

19 Q Other than your counsel, the Union counsel, have you
20 discussed your testimony with anyone since last evening?

21 A No.

22 Q You testified yesterday that you were in a union, a
23 faculty union at the University of Michigan. Just for the
24 record, the University of Michigan is a public school, correct?

25 A Correct.

1 curriculum committee. Do you recall that testimony?

2 A Yes.

3 Q Do you regard your work on the curriculum committee as
4 important?

5 A I do.

6 MR. LATHAM: I have nothing further. Thank you.

7 MR. NADURIS-WEISSMAN: No redirect.

8 HEARING OFFICER PALENCIA: I have some questions. You
9 testified about the curriculum committee and other types of
10 committees. I have no idea how these committees work. Do
11 these -- say your curriculum committee, do they make some type
12 of recommendation --

13 THE WITNESS: Yes.

14 HEARING OFFICER PALENCIA: -- to upper management?

15 THE WITNESS: Yes.

16 HEARING OFFICER PALENCIA: Like what?

17 THE WITNESS: We --

18 MR. LATHAM: Madam Hearing Officer, I'm sorry, the term
19 upper management just does not apply in the university context.

20 HEARING OFFICER PALENCIA: Okay. Do you make any types of
21 recommendations?

22 THE WITNESS: Me personally or --

23 HEARING OFFICER PALENCIA: The committee.

24 THE WITNESS: We do -- we make recommendations about
25 whether new courses let's say or changes to existing courses

1 should go through.

2 HEARING OFFICER PALENCIA: And who are these
3 recommendations made to?

4 THE WITNESS: Well, at my level, it goes to the chair of
5 our committee who's a faculty member and then she makes the
6 recommendation to the administration. Though I couldn't tell
7 you exactly to whom. I believe it goes to the deans and then
8 above.

9 HEARING OFFICER PALENCIA: Okay. During direct, you
10 talked -- you were asked about how USC communicated its message
11 during the campaign. You also talked about what you understood
12 these messages to be.

13 THE WITNESS: Yes.

14 HEARING OFFICER PALENCIA: And you talked about
15 governance. What they meant -- what you understood them to
16 mean with respect to governance.

17 THE WITNESS: Yes.

18 HEARING OFFICER PALENCIA: And I understand you talked
19 about being a threat to governance?

20 THE WITNESS: The Union --

21 HEARING OFFICER PALENCIA: The messages?

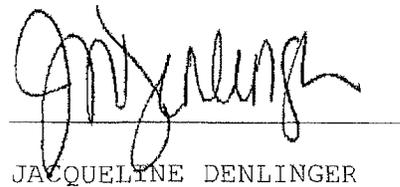
22 THE WITNESS: The message -- yes, the message was that the
23 Union shouldn't go through. It was a threat in fact to
24 governance.

25 HEARING OFFICER PALENCIA: You understood that?

C E R T I F I C A T I O N

1 This is to certify that the attached proceedings before the
 2 National Labor Relations Board (NLRB), Region 31, Case Number
 3 31-RC-164864, University of Southern California and Service
 4 Employees International Union, Local 721, at the National Labor
 5 Relations Board, Region 31, 11500 West Olympic Boulevard, Suite
 6 600, Los Angeles, California 90064, on Wednesday, February 24,
 7 2016, at 9:28 a.m. was held according to the record, and that
 8 this is the original, complete, and true and accurate
 9 transcript that has been compared to the reporting or
 10 recording, accomplished at the hearing, that the exhibit files
 11 have been checked for completeness and no exhibits received in
 12 evidence or in the rejected exhibit files are missing.

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JACQUELINE DENLINGER

Official Reporter

CERTIFICATE OF SERVICE

I am a citizen of the United States and employed in Los Angeles, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 515 South Flower Street, 25th Floor, Los Angeles, California 90071.

On June 9, 2016, I served the foregoing document described as:

UNIVERSITY OF SOUTHERN CALIFORNIA'S REQUEST FOR REVIEW OF ORDER DENYING EMPLOYER'S MOTION TO REOPEN THE RECORD AND FOR RECONSIDERATION, AND BRIEF IN SUPPORT THEREOF on the interested parties by electronic service as follows:

Mori Rubin
Regional Director
National Labor Relations Board
Region 31
11500 W. Olympic Blvd., Suite 600
Los Angeles, CA 90064-1753
Mori.Rubin@nlrb.gov

Eli Nadurris-Weissman
Rothner, Segall & Greenstone
510 South Marengo Avenue
Pasadena, CA 91101-3115
enaduris-weissman@rsglabor.com

Maria Keegan Myers
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510 South Marengo Avenue
Pasadena, CA 91101-3115
mmyers@rsglabor.com

VIA EMAIL:

The email transmission was complete and without error. The email was transmitted to the email addresses listed above on June 9, 2016.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 9, 2016, at Los Angeles, California.


Arlene Figueroa