

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

LEHIGH UNIVERSITY,

Respondent

and

Cases 04-CA-243399 and 04-CA-247234

HOLLY FERENO,

An Individual

**GENERAL COUNSEL’S OPPOSITION TO RESPONDENT’S
MOTION FOR A CONTINUANCE OF HEARING**

Trial in this matter is presently scheduled for Wednesday, November 4, 2020. Respondent filed a motion for continuance of the hearing on October 23. Counsel for the General Counsel opposes this motion for the below reasons.

As background, this case involves allegations that Respondent issued the Charging Party, a registered nurse at the Health & Wellness Center of Lehigh University, a downgraded performance appraisal, then placed her on a performance improvement plan and suspended her, all in retaliation for her protected concerted activity – generally, her expression of concerns about her supervisor and about the director of the Health & Wellness Center.

In support of its motion, Respondent gives two reasons – that the trial would be better for Respondent if it were at a time when students are on break from the semester, and that more time may lead to settlement. Neither of these are sufficient reasons to postpone.

First, Respondent already sought and received one postponement of this trial. On January 22, 2020, Respondent asked for postponement of the trial, then slated for February 18, 2020. Counsel for the General Counsel did not oppose at that time, and the trial was postponed. Thereafter, the pandemic forced another postponement of the trial for a significant period of time.

Under these circumstances, Respondent's second written request for postponement, coming less than two weeks before trial, should be carefully scrutinized given the further delay it would bring.

Second, the issues in the trial are not complex and the entire proceeding could take just one day, or maybe two. Moreover, the trial is being conducted via Zoom videoconference, with the convenience of witnesses not needing to travel and being pulled away only for the short time when testifying. Furthermore, with respect to Respondent's argument that it would be better to hold this trial during a semester break, it is Counsel for the General Counsel's understanding that the University is operating at less than full capacity, meaning the workload may be light enough at this time to allow employees of the Health & Wellness Center to testify; their testimony is expected to be brief. Charging Party Holly Fereno, whose testimony would likely be the longest, no longer works at the University.

Next, the undersigned Counsel for the General Counsel has a large, complex, multi-day trial scheduled to begin on December 16, 2020. To handle both trials so close in proximity to each other would be difficult, but the Region would be ill-served by reassigning either one given the undersigned's knowledge of both.

As to settlement prospects, the parties have made some progress but are not so close as to warrant postponement. Notably, there have been many months to settle this case, but the pace of settlement talks has been quite slow over the last eight months. While the pace has picked up with the looming trial date, that fact suggests that keeping the date would quicken talks and better lead to resolution. The parties would still have a week to settle the case, and Counsel for the General Counsel will devote as much time as needed to settlement talks in order to resolve this case. Postponing might only bog down those talks.

Furthermore, neutral witnesses have already been subpoenaed and made aware of the trial date. Some have already made arrangements to be available on that date. Postponing may be confusing and make it difficult to secure all witnesses.

Lastly, the Charging Party also opposes postponement. With both the General Counsel and Charging Party in opposition, the request should be denied. For the foregoing reasons, Counsel for the General Counsel opposes Respondent's postponement request and urges that it be denied.

Dated: October 27, 2020

Respectfully submitted,

Edward J. Bonett, Jr.

Edward J. Bonett, Jr.
Counsel for the General Counsel
National Labor Relations Board
100 Penn Square East, Suite 403
Philadelphia, PA 19107