

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

LINCOLN UNIVERSITY CHAPTER :  
AMERICAN ASSOCIATION OF :  
UNIVERSITY PROFESSORS :  
 :  
v. : Case No. PERA-C-10-25-E  
 :  
LINCOLN UNIVERSITY :

**PROPOSED DECISION AND ORDER**

On January 22, 2010, the Lincoln University Chapter of the American Association of University Professors (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Lincoln University (Lincoln) violated Section 1201(a)(5) of the Public Employe Relations Act (Act).

On June 9, 2010, the Secretary of the Board issued an order and notice of hearing in which the matter was listed for hearing on September 2, 2010, in Harrisburg, Pennsylvania. On June 29, 2010, Lincoln filed a Motion to Dismiss the Union's charge. On September 2, 2010, the Union filed a Brief in Opposition to Respondent's Motion to Dismiss and in Support of Complainant's Request for an Affirmative Remedy. Lincoln declined to submit a reply brief. The parties agreed that I may first decide the Motion to Dismiss filed by Lincoln, before a hearing is held on the merits.

Therefore, I make the following findings of fact from the documents of record:

FINDINGS OF FACT

1. In settlement of Lincoln's appeal from the Board's decision in Lincoln University Chapter American Association of University Professors v. Lincoln University, 37 PPER 173 (Final Order, 2006), the parties entered into a settlement agreement, the relevant portion of which states that "Lincoln University has the right, within its managerial prerogative, to require all faculty members to submit an outside remunerative activity form, whether the faculty member has any activity or not." Moreover, that agreement includes the following language, "Lincoln University has the right, under the existing adequate cause provisions of the parties' collective bargaining agreement, to discipline faculty members for failure to submit the form, and such right to discipline includes dismissal and all lesser forms of discipline. . . ." (Respondent's Motion to Dismiss, Exhibit 3).

2. By letter dated September 8, 2009, Willie Williams, a bargaining unit member, informed Lincoln of his outside employment. (Charge of Unfair Practices, Exhibit B).

3. By letter dated January 10, 2010, Lincoln's vice president for student affairs informed Williams that he had not submitted the correct form, as required, and formally reprimanded Williams for failing to submit that form. (Charge of Unfair Practices, Exhibit A).

DISCUSSION

The Union alleges that Lincoln committed an unfair practice, "[b]y disciplining Dr. Williams for reporting his outside remunerative activity in a letter, rather than on a particular form issued by the University," and therefore "the University has engaged in the discipline of a bargaining unit member without bargaining that discipline with the Union." Evidently, the Union has forgotten the settlement agreement it entered into three years ago with Lincoln.

That settlement clearly, and unequivocally, allows Lincoln to discipline any bargaining unit member who does not use the proper form when reporting outside remunerative activity to Lincoln.

The logic here is unassailable: Williams, a bargaining unit member, did not submit the proper outside-remuneration form; the settlement agreement gives Lincoln the right to discipline a bargaining unit member who does not submit the proper outside remuneration form. That, ends the analysis.

Albeit, Williams's September 8, 2009, letter to Lincoln does set forth, with specificity, his outside employment, including the weekdays he is so engaged. Nevertheless, the Union agreed that bargaining unit members could be disciplined if they do not file the proper form, and Williams did not do so. Lincoln, evidently, wants to hold the Union to that specific performance. If the Union wanted to be able to simply have bargaining unit members write a letter, it could have bargained that. But, it didn't.

The Motion to Dismiss is granted, and this charge of unfair practices is dismissed in its entirety. Lincoln's actions are clearly allowed under the parties' settlement agreement of September, 2007. Even if the Union proved all allegations in its charge, there is no unfair practice.

#### CONCLUSION

The Hearing Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. Lincoln is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. Lincoln has not committed unfair practices within the meaning of Section 1201(a) (5) of PERA.

#### ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the Examiner

#### HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint rescinded.

#### IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this ninth day of September, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, Hearing Examiner