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Panel: Finding All Sides of the Truth: Investigating and Handling Employee Discipline (CLE)

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National Center for the Study of Collective Bargaining in Higher Education and the Professions
Panel: *Investigating and Handling Employee Discipline - Labor Discussion Scenario* – April 9, 2019

Professor Smith, a member of the University's Sociology Department had developed a unit three years prior, which focused on changing gender identities and social responses. One slides of the presentation was entitled "*Female or Shemale: Can You Tell the Difference?*" with the images of what appeared to be six woman's faces under the heading. When the slide was displayed two students immediately too out their cell phones and took images of the slide and one of the students posted the slide on Twitter. The faculty member asked the students to put their phones away, reminding them that images taking wasn't allowed in the classroom without prior approval. Nothing more was said by the two students and the professor continued with the presentation. At the end of the presentation, Smith quipped, "*So if you've had too much to drink tonight, be careful who you take home.*" Smith later stated he was trying to use humor to break the tension in the room. After class, the two students stormed out of the room, subsequently posting a number of social media notices about the events and starting an online petition to have Smith removed as a faculty member. Social media posts sympathetic to the students' viewpoint spread nationally and spurred a campaign to boycott the University, and withhold donations. Days later the students would file a complaint with the University's Title IX Coordinator about the class presentation and Smith's statement against the professor with the University. The University has an *Anti-Discrimination Policy* which reads in part:

*"The University is committed to ensuring equal employment, educational opportunity, and equal access to services, programs, and activities without regard to an individual's race, color, national origin, sex, religion, age, disability, gender, pregnancy, **gender identity, gender expression**, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, or ex-offender status. This includes, but is not limited to, recruitment, the application process, examination and testing, hiring, training, **equal educational opportunities**, grading, disciplinary actions, rates of pay or other compensation, advancement, classification, transfer and reassignment, discharge, and all other terms and conditions of employment, educational status, and access to university programs and activities. Employees, **students**, applicants or other members of the university community (including but not limited to vendors, visitors, and guests) **may not be subjected to harassment that is prohibited by law or treated adversely based upon a protected characteristic...**"*

The Union-University contract has a due process procedure for Just Cause, ultimately ending in binding arbitration. The contract also has an Academic Freedom clause which reads:

*"Article 11 (Academic Freedom) It is the policy of the University to maintain and encourage full freedom, within the law, of inquiry, teaching and research. In the exercise of this freedom faculty members **may, without limitation, discuss their own subject in the classroom**; they may not, however, claim as their right the privilege of discussing in their classroom controversial matter which has no relation to their subject. The principle of academic freedom shall be accompanied by a corresponding principle of responsibility. In their role as citizens, employees have the same*

freedoms as other citizens. However, in their extramural utterances employees have an obligation to indicate that they are not institutional spokespersons.”

After the completion of their investigation, the University served Professor Smith with a Notice of Discipline, seeking termination for violating the University’s Anti-Discrimination Policy. The Union, in turn, filed a disciplinary grievance on behalf of the Professor, and filed a contract grievance citing a violation of Article 11 (Academic Freedom).