

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6**

**DUQUESNE UNIVERSITY OF THE HOLY
SPIRIT**

Employer

and

Case 06-RC-080933

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-CIO,
CLC**

Petitioner

**REGIONAL DIRECTOR'S DECISION, AND RECOMMENDATION TO OVERRULE
OBJECTION TO ELECTION AND ISSUE CERTIFICATION**

The above-captioned matter is before me on remand from the National Labor Relations Board (Board). In May, 2012, the parties entered into a Stipulated Election Agreement in this case and shortly thereafter the Employer filed a motion to withdraw from that Agreement, asserting that it had a "religious exemption" from Board jurisdiction pursuant to *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). Region Six denied the Employer's Motion to Withdraw, and the Employer took a special appeal to the Board. When its special appeal was denied by the Board,¹ the Employer filed on September 25, 2012, its Motion for Board to Order an Evidentiary Hearing, Vacate Election, and Dismiss Petition and the Objection to Conduct of Election.²

On December 16, 2014, the Board issued its decision in *Pacific Lutheran University*, 361 NLRB No. 157, in which the Board reexamined the standard for declining or extending jurisdiction in cases involving self-identified religious colleges and universities. Following that decision, on February 12, 2015, the Board issued an Order remanding this proceeding to me for further appropriate action consistent with *Pacific Lutheran University*.

A hearing officer of the Board held a hearing³ and both parties filed timely briefs. The sole issue at the hearing was whether the Board should decline to exercise jurisdiction over the Employer under the recent standards enunciated by *Pacific Lutheran University*.

¹ A mail ballot election was subsequently conducted and the votes counted. The Tally of Ballots dated September 20, 2012, shows that there were 50 votes in favor of representation and 9 votes against representation.

² The Employer's Objection is that the Board lacks statutory jurisdiction over the Employer.

³ On June 4, 2015, the Employer filed a Motion to Correct transcript which is hereby granted.

The Employer contends that it does not meet the jurisdictional standards of *Pacific Lutheran University* as both the University itself and its employees in the petitioned for unit are held out as performing a religious function in a religious environment, and that the Board should not assert jurisdiction and thereby insert itself between the University and its Catholic mission and philosophy, and a group of faculty crucial to achieving that mission⁴

The Petitioner contends that jurisdiction is appropriate here as while the Employer purports to offer a religious educational environment, the part-time faculty in the petitioned-for unit are not held out by the Employer, either to the students or to the public, as having specific religious functions or any functions which are different from those of instructors at other educational institutions.

I have considered the evidence and the arguments presented by the parties on these issues.⁵ As discussed below, I have determined that the Employer, contrary to its contentions, is not exempt from the Board's jurisdiction under the two-pronged test of *Pacific Lutheran University*. In so doing, I have concluded that although the Employer holds itself out as providing a religious educational environment for its students, it has not been established that the petitioned-for adjunct faculty members are held out as performing a specific role in maintaining the University's religious educational environment. Therefore, the exercise of jurisdiction by the Board over the Employer is proper. Accordingly, an appropriate certification of representative of the 2012 election should issue, in accordance with the Tally of Ballots dated September 20, 2012.⁶

To provide a context for my discussion of the issues, I will first review the Employer's organization and operations. Then, I will present in detail the facts and reasoning that support each of my conclusions on the issues.

I. OVERVIEW

The Employer is a private, coeducational university located in Pittsburgh, Pennsylvania, which offers degree programs at the baccalaureate, professional, master's and doctoral levels. It currently has about 6500 undergraduate students and 3000 graduate students. The students attend ten different schools within the University, including McAnulty College, which is the employing entity of the petitioned-for unit.⁷ The Employer's faculty consists of tenured professors and full-time, non-tenured instructors, in addition to the adjunct professors employed by McAnulty

⁴ The Employer also argues that *Pacific Lutheran University* was wrongly decided by the Board and should be overturned. However, as noted below, I do not reach that issue herein.

⁵ The Petitioner argues that the Employer should be bound to the Stipulated Election Agreement that was executed in 2012, and that its current challenge to the Board's jurisdiction is untimely. I note that statutory jurisdiction, unlike discretionary jurisdiction, may be challenged at any time. See *Anchortank, Inc.*, 233 NLRB 295, fn. 1 (1977).

⁶ In so doing, I also recommend that the Employer's Objection to the Conduct of Election filed September 12, 2012, be overruled as its sole basis asserts the Board's lack of jurisdiction. Therefore the objection is coextensive with the issues presented herein.

⁷ The Unit is: All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

College and other Schools within the University. The Employer is accredited by the Middle States Commission on Higher Education.

II. FINDINGS OF FACT

A. The Nature and Environment of the University

The Employer was founded in 1878 by members of the Spiritan [a Roman Catholic] religious congregation and it is the only Spiritan university in the United States. The Employer's legal name, as amended, is "Duquesne University of the Holy Spirit" and its motto is "It is the Spirit Who Gives Life."⁸ The Employer's Seal is a white dove, symbolizing the Holy Spirit.

The Employer is organized as a nonprofit Pennsylvania membership corporation⁹ and, in accordance with its Articles of Incorporation and Bylaws, only Spiritan priests and brothers can serve as its Members.¹⁰ The Members' powers include the appointment of the Employer's Board, President, and officers and directors, as well as the authority to "determine or change the mission, the philosophy, objectives or purpose of the University." The Employer is officially recognized as a Catholic university by the local Bishop and listed as such in the *Official Catholic Directory*. The Bishop or the Bishop's designee has an *ex officio* seat on the Employer's Board of Trustees.

The Employer identifies itself on its Internet website as "A Catholic University in the Spiritan Tradition." Also featured on its website as well as in other documents, including the student handbook and faculty handbook, is its Mission Statement which reads:

Duquesne University of the Holy Spirit is a Catholic university founded by members of the Congregation of the Holy Spirit, the Spiritans, and sustained through a partnership of laity and religious. Duquesne serves God by serving students through:

- Commitment to excellence in liberal and professional education;
- Profound concern for moral and spiritual values;
- Maintaining an ecumenical atmosphere open to diversity;
- Service to the Church, the community, the nation, and the world;
- Attentiveness to global concerns.

As a Catholic university, the Employer is subject to guidelines that the Catholic Church has issued for universities: the 1990 *Ex Corde Ecclesiae* (*Ex Corde*) contains guidance given by Pope John Paul II, and the Application of *Ex Corde Ecclesiae* for the United States (Application), was promulgated by the U.S. Conference of Catholic Bishops (USCCB) in 2000. The *Ex Corde* and the USCCB's Application instruct that Catholic universities should contribute to the work of the Catholic Church through education and by uniting faith and reason. Both the *Ex Corde* and

⁸ The Holy Spirit is one component of the Holy Trinity, which is the Catholic understanding of God.

⁹ The Employer has also been granted an exemption under Section 501(c) of the Internal Revenue Code.

¹⁰ The Members are appointed from within the Spiritan organization by its hierarchy.

USCCB's Application are provided on its website, available to the public as well as current and prospective students

The Catholic Church considers education to be the work of the Church, even if teaching in secular disciplines, and posits that educating students is an expression of service to God. This concept is reflected in the portion of the Employer's mission statement that states that it " .serves God by serving students. " This mission extends to promoting moral and spiritual development in the students, regardless of their faith.

Catholic universities are also instructed to be inclusive to all faiths and lack of faith. Thus, the Employer is not required to teach only Catholic students, mandate Catholic sacraments, or employ only Catholic professors. In its 2013-2014 Faculty Resource Guide which is available on its website, the Employer states: "[a]s a Catholic University, Duquesne is dedicated to fostering an environment that invites, but does not conscript, participation in spiritual life."

The Employer has an Office of Mission and Identity whose purpose is to reach out to faculty through forums, presentations, and discussion groups to reinforce information about its Mission. The Employer disseminates its Mission and its philosophy of service to God through education in the publications it puts out, such as its university magazine, its "Viewbook" sent to prospective students, its fund raising letters to alumni, and various other documents which are either mass mailed or available to the public on its website. The Employer also articulates its philosophy in orientation sessions for incoming freshman, speeches at its annual Convocations, and other outreach events. The Employer's core curriculum for undergraduates mandates that each student achieve three credits in Ethics and three credits in Theology, although there are options available which emphasize the philosophical, rather than the religious, aspect of these subjects.

The Employer's campus community includes about a dozen Spiritan priests who live on campus and serve the Employer as faculty, adjunct faculty, and/or administrators. There is a page on the Employer's website captioned "Meet the Spiritans" which pictures over twenty Spiritan priests, including the above-referenced faculty and administrators, who live, work, and/or study at the campus. There is another section on the website entitled "The World of Spiritans" which is dedicated to describing the Order and the Spiritan Rule of Life. There is an annual, well-publicized "Founders Week" which celebrates the Spiritans' community and has many special events. Other members of the Spiritan congregation visit the campus and attend or are honored during Founders Week.

The Employer's physical campus contains a Catholic chapel where Mass is said every day as well as on special occasions. The Bishop celebrates a Mass of the Holy Spirit at the beginning of each academic year. These religious ceremonies are advertised and are open to the public, as well as students and faculty. At the crossroads of the campus is a 25 foot tall crucifix. The surrounding area has benches and can be used for prayer, meditation, or reflection. There are other items of religious art and Catholic symbols on the campus, including statues of Catholic saints and the Virgin Mary, which are in various locations. The University Seal, the symbol for the Holy Spirit, is also featured in locations on campus. More than ten campus buildings and residence halls are named for Spiritan members. A crucifix may be found in most, if not all, of the classrooms and conference rooms of the University.

B. The Role of the Petitioned-for Unit Members within the University

In 2012, when the representation petition was filed in this case, there were approximately 88 adjunct professors in the proposed bargaining unit.¹¹ During the most recent five year period prior to the hearing, the average number of student credit hours taught in the core curriculum subjects by adjunct faculty was 44 percent of the total hours, ranging from a high of 49 percent, to a low of about 43 percent. The adjunct faculty members are part-time employees who are contracted to teach a particular scheduled class for a semester and are limited to teaching six credits each semester. Adjunct professors have no expectation of continued employment beyond that semester for which they are currently contracted. The adjuncts received their contractual rate and no fringe benefits. The adjuncts' one semester contracts do not reference religious duties or the Employer's Mission, or any role that the adjunct would be expected to play in furthering the Mission or the Employer's religious educational environment.

There was considerable testimony at the hearing with respect to the employment application and interview process for faculty but that testimony revealed that the described procedures are not utilized for adjuncts.¹² Adjuncts are generally hired as the need arises due to registration levels and the hiring sometimes occurs at the last minute. While an application for adjunct employment exists, the Employer does not mandate it in the hiring process and it is not always utilized. Individuals sometimes submit unsolicited resumes for consideration so there is a pool of instructors available from these. Likewise, adjunct positions may be filled without advertising or posting the positions as there are past adjunct instructors available. The record contains only one instance of the Employer advertising for an adjunct instructor since 2012. While that advertisement self-identifies the Employer as a Catholic university, it does not contain any reference to any role that the adjunct would play in furthering that identity.

The Employer's process for hiring adjuncts is decentralized, due, as stated above, to the nature of the position, the number of positions, and the timing sometimes necessary to fill vacant teaching spots. Rather than using the application and interview process through the University Provost's Office that other faculty must undergo, the adjuncts are hired by the chairs of the individual departments within the various Schools where they will teach. While the record reveals that these chairs attend hiring seminars in which any of the Employer's expectations related to hiring are communicated to them, there is no evidence in the record from any department chair as to how the hiring is actually accomplished and what information is communicated to the adjunct applicant. In accordance with prevailing law, the Employer does not question any applicants regarding their faith, or lack thereof, and there is no requirement that faculty be Catholic, Christian, or hold any religious belief.

Adjuncts are invited to a new instructor orientation at the beginning of the academic year, but there is no requirement that they attend. Similarly, adjuncts are invited to the annual University Convocation, as well as various other campus events such as Bible studies and

¹¹ The record reveals that as of 2012, the total number of full-time faculty members was 486, with 260 being tenured faculty and the remaining faculty being non-tenured. The record does not reveal the number of adjuncts in Schools other than McAnulty College.

¹² There was also testimony concerning contents of the Employer's Strategic Plan. I do not rely on the Plan documents provided as they clearly are goals, as opposed to established facts. Moreover, the testimony revealed, without specification, that not all of the Plans' goals have been attained.

mission trips, but attendance at these is not required either. There is no evidence that the Employer monitors which adjuncts might or might not attend any of these events.

The Employer has a Faculty Handbook which is not distributed individually to adjunct faculty but is available on the Employer's website. The Handbook, at page 12 states:

Adjunct Faculty. The adjunct faculty is comprised of individuals who teach up to 6 credit/contact hours per term at the University. Exceptions to this limit may be made by the Dean of the College/School. As a rule, adjuncts are responsible only for teaching. The SES [Student Evaluation Survey*] will be administered in all classes taught by adjunct faculty. Adjunct faculty members do not have voting privileges and their specific responsibilities are determined by their chairs.

*The **Student Evaluation Survey** form is contained in the Handbook at page 83.

The Employer has endowed Chairs in various departments which are available to "outstanding faculty members" who serve as role models for other faculty. However, these prestigious Chairs are for full-time faculty only so adjuncts are not eligible to apply. There is a "Part-time Faculty Mission Micro-Grant" program for which adjuncts are eligible and they can receive up to \$500 for approved projects. In this regard the website states that the grants are intended to support "scholarly, curricular and professional development opportunities that reflect Duquesne's mission and engage resources in Catholic intellectual tradition." The record reveals that adjuncts have, at times, received these grants. Adjuncts are not, however, required to apply.

In addition to the Employer's Mission Statement which has been discussed above, the Employer's Undergraduate Catalog describes the Mission of McAnulty College as:

The College prepares students for productive and creative lives of service in a rapidly changing world. We teach students to think, write and speak clearly and critically, so they can seek truth about God, themselves, and society, and contribute to their families, communities, businesses and professions.

Two of the Employer's adjunct professors, Clint Benjamin and Adam Welles Davis, testified at the hearing. Both have taught for the Employer for more than six years. Both testified that they began their employment by responding to a newspaper ad and submitting a resume. Neither of the witnesses recalled filling out an employment application. Both were interviewed by their respective Department heads. Neither recalled any discussion about the Employer's Catholic identity or Mission. Neither was told that a role in supporting the Employer's Mission would be a condition of their employment.

Benjamin testified that he attended an Adjunct Orientation early in his career with the Employer. He said the two current core classes in the English Department that he teaches do not have any religious, or anti-religious, content and that he does not incorporate any element of Catholicism into his teaching or his evaluation of his students. Benjamin testified that he was not told what to teach and he merely submits his syllabi to the Department head at the beginning of the semester. He said there was nothing in his syllabi which referenced the Employer's Mission

or religious identity. The English course that Benjamin teaches for the Employer is no different than the one that he teaches at a Community College.

Regarding his teaching performance, Benjamin testified that he is evaluated only by students via the above-referenced SES. The SES forms submitted by the students to evaluate the adjuncts contain no criteria referencing Catholicism, religion, God, the Spiritans, the Employer's Mission, or the adjuncts' adherence to any of the foregoing. Benjamin testified that his teaching has occasionally been observed by a faculty observer from whom he received some feedback but it did not include any comments about religious content, or lack thereof, or anything about the Employer's Mission or his alleged role in it. Benjamin testified that no student had ever come to him for advice about their spiritual development and no Employer representative had ever told him that counseling students concerning their religious development was a part of his job duties.

Davis testified that when he was hired there was no discussion of the Employer's Mission or philosophy, his opinion on it, or how he would incorporate it into his teaching. He was told he could design his own course. While he submitted a syllabus early in his employment, he does not regularly submit them to anyone and no one approves his syllabi. Davis has never attended an instructor orientation, Convocation, Bible study, or mission trip. He testified that he does not have any participation within the Employer's organization beyond the course that he teaches. He presently teaches one class that meets one night a week. Davis testified that he goes to the campus, teaches his one class, and goes home. If he needs to do something like pick up paperwork, he might stop by at another time but he otherwise has no involvement in the campus community. Adjuncts are not provided with their own office space.

The record contains testimony concerning academic freedom and whether faculty would be free to teach a concept which was not in accordance with Catholic teachings. The Provost testified that faculty could not be "hostile" to the Employer's mission and, if such a person was brought to his attention, he would take disciplinary action, such that, for example, the adjunct's contract would not be renewed. As mentioned above, the adjuncts are not evaluated on this type of basis and there is no evidence of any complaints concerning adjuncts who were "hostile" or who have been disciplined. The record, however, is clear that adjuncts are not required to be Catholic and are not told that they must adhere to Catholic teachings or values in their job performance.

III. ANALYSIS

A. The Legal Standards

In *NLRB v. Catholic Bishop of Chicago*, the Supreme Court overturned the Board's then-applicable policy to "to decline jurisdiction over religiously sponsored organizations 'only when they are completely religious, not just religiously associated.'" 440 U.S. 490, 492 (1979), quoting *Roman Catholic Archdiocese of Baltimore*, 216 NLRB 249, 250 (1975). The Court found "no clear expression of an affirmative intention of Congress that teachers in church-operated schools should be covered by the Act." Accordingly, the Court concluded that there is no Board jurisdiction in these instances. Instead, the Court stated that the Act must be construed to exclude church-operated schools because to do otherwise "will necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission." *Catholic Bishop*, 440 U.S. at 502. The Board's entanglement in such inquiry would violate the First Amendment. *Id.* Although it invoked the doctrine of constitutional

avoidance, the Court nevertheless posited that Board assertion of jurisdiction over church-operated schools would "give rise to entangling church-state relationships of the kind the Religion Clauses sought to avoid." *Id.*, at 503 (quoting *Lemon v. Kurtzman*, 403 U.S. 602 (1971)). The Court declined to reach "difficult and sensitive" constitutional questions presented by an application of Board jurisdiction.

For many years, the Board applied a "substantial religious character" test to assess whether, under *Catholic Bishop*, exercise of the Board's jurisdiction presents a significant risk of infringing on the First Amendment. *See, e.g., Trustees of St. Joseph's College*, 282 NLRB 65, 68 (1986), in which the Board concluded that the concerns of the *Catholic Bishop* court were applicable to colleges and universities, reversing a line of cases that had limited *Catholic Bishop* to elementary and secondary schools. Subsequently, in *University of Great Falls*, the Board rejected the contention of a religiously sponsored university, that the exercise of Board jurisdiction would violate the Religious Freedom Restoration Act. 331 NLRB 1663 (2000).¹³ *See also Carroll College, Inc.*, 345 NLRB 254 (2005), reaffirmed at 350 NLRB No. 30 (2007).¹⁴

This year, in *Pacific Lutheran University*, the Board adopted a new, two-pronged standard for this jurisdictional inquiry. The Board will not decline to exercise jurisdiction over faculty members at a university that claims to be a religious institution unless it is demonstrated that: (1) the university holds itself out as providing a religious educational environment; and (2) the university holds out the petitioned-for faculty as performing a specific role in creating or maintaining the university's religious educational environment. *Pacific Lutheran University*, 361 NLRB No.157, slip op. at 6-8.

The first prong of the *Pacific Lutheran University* test is identical to the first step of the D.C. Circuit's three-part test for exemption from Board jurisdiction. *See University of Great Falls*, 278 F.3d 1335. The Board noted that it also agreed with the D.C. Circuit's requirement that, to be exempt from the Board's jurisdiction, the institution must be organized as a nonprofit. 361 NLRB No. 157, slip op. at 7. However, instead of treating this as an independent second step, as the D.C. Circuit had, the Board stated only that it was "relevant in an examination of how a university holds itself out." *Id.*

In evaluating the first prong, which is a threshold showing, the Board will give more weight to contemporary self-presentation than to founding and historical documents. *Id.* Documents demonstrating this self-presentation would include "handbooks, mission statement, corporate documents, course catalogs, and documents published on a school's website." *Id.*, slip op. at 6. This initial showing is "minimal," and "does not impose a heavy burden." *Id.*, slip op. at 7.

The more significant aspect of inquiry is in the second prong, and focuses on the petitioned-for faculty members, rather than on the university as a whole. Similar to the first prong, the examination is on how the university *holds out* these faculty, but strictly avoiding an intrusive inquiry into the nature of the religious tenets of the institution. *Id.*, slip op. at 8. The Board will not look behind publicly available documents to assess the university's actual practice

¹³ Decision vacated by *University of Great Falls v. NLRB*, 278 F. 3d 1335 (D.C. Cir. 2002).

¹⁴ Decision vacated by *Carroll College, Inc. v. NLRB*, 558 F.3d 568 (D.C. Cir. 2009).

nor will any individual teacher's specific actions be investigated. *Id.*, slip op. at 9. Further, the inquiry is demanding. The faculty must be *held out* as performing a *specific religious function* and "[g]eneralized statements that faculty members are expected to, for example, support the goals or mission of the university are not alone sufficient." *Id.*, slip op. at 8.

When the Board applied the new standard to the facts of *Pacific Lutheran University* itself, it examined the statement in the faculty constitution that a faculty member "becomes a member of a community of scholars who respect and uphold the principles of Lutheran Higher Education" *Id.*, slip op. at 12, fn. 22. Upon reflection, the Board found this statement to be merely aspirational in nature and that it did not demonstrate that faculty members were required to perform any specific religious role or function. *Id.*

Conversely, evidence showing that faculty members are required to integrate the institution's religious tenets into coursework, serve as religious advisors to students, propagate those tenets, engage in religious training, or conform to the tenets in a manner specifically linked to their job duties will be sufficient to exempt an institution from Board jurisdiction. *Id.*, slip op. at 9. Such evidence will be found in the school's statements to students, faculty, and the public, including on its website and in its handbooks, employment contracts, and job descriptions. *Id.*, slip op. at 10. The relevant issue in the test for the second prong is whether a reasonable prospective employment applicant "would conclude that performance of their faculty responsibilities would require furtherance of the college or university's religious mission." *Id.*, slip op. at 9. The required evidence should show that prospective applicants would be expected to perform specific religious functions different from functions performed at other similar institutions or that the evaluation of their success in fulfilling these goals would be any different. *Id.*, slip op. at 9, fn. 16.

The Employer argues that the two-pronged test described above entails the same improper, unconstitutional inquiry as its "substantial religious character" predecessor and fails to avoid the entanglement that the Court in *Catholic Bishop* strove to avoid. Thus, the Employer urges that the Board should adopt the *Great Falls* test, and abandon its recent determinations in *Pacific Lutheran University*. I will not address this contention by the Employer as this argument must await consideration by the Board. Pursuant to Section 102.67(c)(1) of the Board's Rules and Regulations, my obligation is to apply Board precedent and not to determine whether that precedent should be varied.

B. The Employer holds out the Religious Nature and Environment of the University

The Employer consistently identifies itself as a Catholic Spiritan institution and publicly describes those values as inspiring the standard of education it provides. It prominently features Catholic themes on its website and in its publications. Its Mission, Motto, and Seal also invoke these Catholic themes and are in the public domain available to all through internet or its publications.

The Employer discusses its Spiritan educational environment in student recruitment materials and during its new student orientation. The Employer promotes its Catholic identity in leaflets, letters, and speeches, which are distributed and disseminated both internally and external to the University. The Employer not only claims itself to be a Catholic university but is

officially recognized and registered as such and proclaims this fact in its advertisements and outreach to the public.

The Employer provides regularly scheduled Catholic religious services on campus, albeit non-mandatory, and includes Catholic symbols and icons in diverse locations on its campus. The Employer sponsors Bible study groups and religious lectures, recruits for and participates in Catholic relief work and community service projects, and supports Catholic mission work among students and faculty. While these endeavors are not mandatory, participation is encouraged by the Employer's administration. The Employer is organized as a non-profit institution and recognized as such by the IRS.

Based on the above and the record as a whole, I find that the Employer holds itself out as providing a religious educational environment to students, applicants, and the general public. Therefore, the Employer meets the first prong of the standard established in *Pacific Lutheran University*. *Id.*, slip op. at 6-7.

C. The Employer does not hold out the Petitioned-for Unit Members as Performing Functions which relate to Its Religious Environment

The Board in *Pacific Lutheran University* stated that when, as here, the threshold requirement of prong one of its jurisdictional inquiry has been satisfied, "the university must show that it holds out the petitioned-for faculty members themselves as performing a specific role in creating or maintaining the college or university's religious educational environment. " *Id.*, slip op. at 11. [Emphasis added] I find that the record here does not support a conclusion that the Employer holds out its adjunct professors as performing any religious function in creating or maintaining its religious educational environment.

While there is voluminous evidence in the record concerning the Employer's religious identity and its stated Mission, there is scant evidence that adjuncts are expected to act in any way to advance the Employer's religious message or to do anything with regard to it, other than to not be openly hostile to it. The record is replete with descriptions of the Employer's religious nature and examples of the proclamation and dissemination of its Mission in various ways as have been mentioned above. It would be disingenuous for anyone to argue that the adjuncts would not be aware of the religious environment developed by the Employer but awareness is not the equivalent of contributing to it or advocating for it. Although there may be evidence that "faculty" in the broad sense may be charged with certain responsibilities, there is no evidence that adjuncts have any such responsibilities. Moreover, the record supports a finding that the petitioned-for adjunct professors do not have the same standing and are not treated by the Employer in the same manner as the full-time faculty are treated, whether they are tenured or non-tenured.

In its website and publications, the Employer makes no claim that the adjunct instructors who are members of the petitioned-for unit play any role in contributing to the University's mission or religious environment. The Employer's advertisement for an adjunct instructor which is included in the record does not reference any duties that the applicant will support and/or be knowledgeable about the Employer's religious aspirations. There is no mention of any such religious duties in the adjuncts' employment contracts and there is no evidence that adjuncts

are personally informed that they have these types of responsibilities. Neither are the adjuncts evaluated on performance of any religious functions nor is there any evidence of adjuncts having been disciplined for failure to perform any such functions. Therefore, a reasonable candidate for an adjunct teaching position with the Employer would not conclude that any religious responsibilities were required by their job duties.

The Faculty Handbook contains a section on the aspirational mission and goals of the Employer but does not mention God, Catholicism, or even religion, in connection with adjunct faculty duties. The evidence does not reveal that adjuncts are expected to serve as religious advisors to students, engage in religious training, educate students regarding any tenets of religious faith, or conform to any tenet of Catholicism in the course of their teaching duties.

In its brief, the Employer argues that it meets prong two of the *Pacific Lutheran University* test because (1) its mission is religious and it consistently communicates to all existing and prospective faculty that their participation in the mission is integral and (2) its religious mission affects adjunct faculty hiring, teaching, its definition of academic freedom, and grounds for non-renewal. [Employer brief at 33] I cannot agree. There is a lack of evidence that adjuncts are informed of any requirement of participation with respect to conveying or supporting the Employer's mission. Further, as I stated above, there is no evidence that such religious duties are conveyed to adjuncts, or are a consideration in hiring, job performance, the course content of adjuncts, or the continued contractual renewal of any adjunct. In the absence of specific substantial evidence, generalized statements concerning "faculty" in the Employer's publications or on its website are the type that the Board found insufficient in *Pacific Lutheran University* and are unpersuasive here. *Id.*, slip op. at 8.

Based on the above, I find that the Employer does not hold out its petitioned-for adjunct faculty members as performing any religious function as is required by the second prong of the *Pacific Lutheran University* test.

D. Conclusion

In accordance with my findings detailed above, I have found that the Employer holds itself out as a religious educational institution and, thus, meets the criteria of the first prong of the Board's test in *Pacific Lutheran University*. However, I have not found that the Employer holds out its adjunct professors who are members of the petitioned-for bargaining unit as serving any role in creating or maintaining the Employer's religious educational environment. Therefore, the second prong of *Pacific Lutheran University* test has not been satisfied.

Accordingly, based on all of the above and the record as a whole, I conclude that the Board may properly assert jurisdiction over the Employer in this case.

IV. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter. The Employer, a Pennsylvania nonprofit membership corporation with its sole facility located in Pittsburgh, Pennsylvania, operates a university of higher education. During the past twelve-month period, the Employer derived gross revenues in excess of \$1 million from the operation of its facility. During that same period, the Employer purchased and received directly from points located outside of the Commonwealth of Pennsylvania for use at its Pittsburgh, Pennsylvania, facility, goods and materials valued in excess of \$50,000.
3. The Petitioner, a labor organization within the meaning of the National Labor Relations Act, claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

V. RECOMMENDATION and ORDER

IT IS RECOMMENDED that the Employer's Objection to the Conduct of Election dated September 25, 2012 be overruled.¹⁵

IT IS HEREBY ORDERED that if the Board adopts my findings, conclusions and recommendation, an appropriate Certification of Representative issue in the following appropriate unit, in accordance with the Tally of Ballots dated September 20, 2012, which was served upon the parties and which sets forth that a majority of the valid ballots has been cast for United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC.

All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

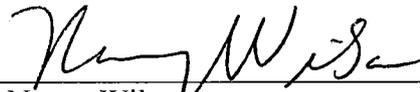
¹⁵ Pursuant to the provisions of Sections 102.69 and 102.67 of the National Labor Relations Board's Rules and Regulations, exceptions to this Decision with respect to the Objection may be filed with the Executive Secretary's Office in Washington, D.C. Exceptions must be received in Washington, D.C. by June 19, 2015. *Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.*

VI. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this Decision by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by June 19, 2015.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1099 14th Street NW, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: June 5, 2015



Nancy Wilson
Regional Director
National Labor Relations Board
Region 06
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222-4111