

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

MANHATTAN COLLEGE
Employer
and

Case No. 02-RC-023543

**MANHATTAN COLLEGE ADJUNCT FACULTY
UNION, NEW YORK STATE UNITED TEACHERS,
AFT/NEA/AFL-CIO**
Petitioner

SUPPLEMENTAL DECISION AND ORDER

The above-captioned matter is before me on remand from the National Labor Relations Board (“Board”). On January 10, 2011, the Acting Regional for Region 2 issued a Decision and Direction of Election. The Employer filed a Request for Review of the Decision, which the Board granted.¹

On December 16, 2014, the Board issued its decision in *Pacific Lutheran University*, 361 NLRB No. 157, revising its standards for declining jurisdiction over faculty members at self-identified religious colleges and universities and determining faculty managerial status. On February 3, 2015, the Board issued an order remanding the instant case to me for further appropriate action consistent with *Pacific Lutheran*, including reopening the record, if necessary.

Given the Board’s decision that “[a] university’s contemporary presentation is more probative,” *Id.*, slip op. at 6, and since over four years had passed since the initial Decision and Direction of Election, I issued an Order to Show Cause on February 20, 2015. Based on both parties’ responses, I issued an Order Scheduling Hearing to reopen the record to afford the parties the opportunity to submit further evidence.

Therefore, I make the following findings and conclusions.²

¹ A mail ballot election was held from February 16 to March 9, 2011; the ballots were impounded on March 10, 2011.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The Hearing Officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and the only issue as stated herein is whether the Supreme Court’s decision in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979) precludes the exercise of jurisdiction.
- c. The labor organization involved claims to represent certain employees of the University.
- d. 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.

I. Issues and Parties' Positions

Manhattan College (the "College") is an institution of higher learning located in the Bronx, New York. The College is comprised of five schools: Arts, Sciences, Business, Education, and Engineering. Manhattan College Adjunct Faculty Union, New York State United Teachers, AFT/NEA/AFL-CIO (the "Petitioner") seeks to represent certain employees of the College for the purposes of collective bargaining. In 2011, the parties stipulated that the following unit is an appropriate unit within the meaning of Section 9(b) of the Act:

INCLUDED: All individuals employed as part-time faculty with an adjunct academic rank who teach a minimum of a three (3) credit college degree level course for a full semester (or the equivalent hours of a semester length course)

EXCLUDED: All other full and part-time employees, including visiting and full time faculty, regardless of teaching load, students who are employed by the College, and guards and supervisors as defined in the Act.

The College contends that it does not meet the jurisdictional standards of *Pacific Lutheran University* as both the College 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. The College further argues that the *Pacific Lutheran* test is inappropriate, as it creates the same religious entanglement issues as the Board's previous "substantial religious character" test, and the proper test is the one set forth in *University of Great Falls v. NLRB*, 278 F.3d 1335, 1343 (D.C. Cir. 2002) and *Carroll College, Inc. v. NLRB*, 558 F.3d 568, 572 (D.C. Cir. 2009).

The Petitioner contends that jurisdiction is appropriate here because the College does not hold itself out as providing a religious educational environment. Further, even if the College meets that threshold requirement, the Petitioner asserts that the College does not hold out the petitioned-for adjunct faculty members as performing a specific role in creating or maintaining a religious educational environment.

II. Decision

I have carefully reviewed and considered the record evidence and the arguments of the parties at hearing and in their respective post-hearing briefs. Based on the entire record in this proceeding and for the reasons set forth below, I find that the College holds itself out as a religious educational environment, but the College failed to establish that it holds out the petitioned-for adjunct faculty members as performing a specific role in maintaining the College's religious educational environment. Therefore, the exercise of jurisdiction by the Board over the College is proper.

III. Statement of Facts

A. Religious Nature and Environment of the College

Manhattan College is a 4-year institution of higher education located in the Bronx, New York. It was founded in 1853 by the De La Salle Christian Brothers, a Catholic religious teaching order started by Saint John Baptist de La Salle, the patron saint of teachers. The College is a member of the Association of Catholic Colleges and Universities and is officially recognized as a Catholic institution within the Archdiocese of New York and listed as such in the Official Catholic Directory (*Kenedy Directory*). The College is also a member of the Lasallian Association of Colleges and Universities. The College is organized as a 501(c)(3) not-for-profit corporation.

As a Catholic university, the College 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 Catholic universities to contribute to the work of the Catholic Church through education by uniting faith and reason. In 2011, the College issued a report to its Board of Trustees entitled "Decennial Report of the Application of *Ex Corde Ecclesiae* for the United States" which detailed the interrelationship between the College's religious identity and mission and its strategic plan, curriculum and programs that promote and sustain the College's religious environment. The report is available on the College's website.

The College's Strategic Plan is a ten-year plan that started in 2011 and focuses on providing a "distinctively engaging education experience, one that is grounded in its Catholic and Lasallian commitment to education as both a search for wisdom and a means to contribute to the greater good of the human family." One goal of the plan was "to ensure our core identity as Catholic and Lasallian is vital and visible throughout the College."

As an outgrowth of the College's Strategic Plan, it updated its mission statement in 2012.³ The mission statement is encapsulated in a publication entitled *Manhattan College and its Lasallian Catholic Mission* (referred to as the "Green Book" because of its distinctive green cover) and is also available on the College's public website, course catalog, and employee handbook.⁴ The College frequently quotes from the mission statement at events and in its publications. It states:

Manhattan College is an independent Catholic Institution of higher learning that embraces qualified men and women of all faiths, cultures, and traditions. The mission of Manhattan College is to provide a contemporary, person-centered education experience that prepares graduates for lives of personal development, professional success, civic

³ The College also updated its student Code of Conduct after completing its Strategic Plan, emphasizing that students will model their behavior on Lasallian Catholic values.

⁴ The faculty handbook, approved May 9, 2012, contains the College's previous mission statement.

engagement, and service to their fellow human beings. The College pursues this mission through programs that integrate a broad liberal education with concentration in specific disciplines in the arts and sciences or with professional preparation in business, education and engineering.

Established in 1853 by the Institute of the Brothers of the Christian Schools, the College continues to draw its inspiration from the heritage of John Baptist de La Salle, the innovator of modern pedagogy and patron saint of teachers. Among the hallmarks of this Lasallian heritage are excellence in teaching, respect for human dignity, reflection on faith and its relation to reason, an emphasis on ethical conduct, and commitment to social justice.

Since 2012, the College provides all students, staff and faculty with a copy of the Green Book. The College designed it to educate its readers about the College's Catholic mission and heritage. In the introduction to the Green Book, the College states that the book "should accompany your explorations of the campus and its events." The Green Book contains a collection of quotations intended to assist with reflection on the College's core values and commitments, and contains photographs of Catholic iconography that is featured throughout the campus. It also contains traditional Lasallian prayers that the College regularly uses to open meetings, orientations, convocations, and other events.

The College prominently features the Lasallian Star of Faith as part of its seal, around campus, and in its publications. The star is five-pointed and represents the five core principles set forth by John Baptist de La Salle: (1) Respect for All People; (2) Quality Education; (3) Inclusive Community; (4) Concern for the Poor and Social Justice; and (5) Faith in the Presence of God. The College's seal includes the Lasallian Star and the phrase "Signum Fidei," which is Latin for "sign of the faith."

As stated above, the College's physical campus contains indicia of the Catholic faith, including two chapels, crucifixes in some classrooms, and a statue of John Baptist de La Salle. There is religious themed artwork throughout the campus including stained glass windows that depict the life and mission of Saint John Baptist de La Salle.

The College maintains a Campus Ministry & Social Action Office that was created in 2002. The purpose of the office is to help "instill the values of faith, service and community in students of all religious and spiritual traditions." It provides opportunities for students to develop their spirituality; to perform community service; to reflect on issues of social justice; and to put faith into action. The campus ministry office regularly has activities and programs including lectures, discussions, learning opportunities, liturgies, prayer sessions, masses, retreats, and community service projects.⁵ These events are publicized in the College's Campus Announcements email that is distributed to all students, faculty and staff, and on flyers posted throughout the campus. All of the above celebrations, events, prayer services and programs are optional and voluntary for all faculty, including adjuncts. Additionally, the College offers daily Catholic services and masses on campus, but student and faculty attendance is not required.

⁵ The College also has an active partnership with Catholic Relief Services, a global humanitarian organization that provides community service opportunities around the world.

The College celebrates Mission Month in April to promote its Lasallian Catholic mission. The College announces Mission Month through banners, posters, emails, campus calendars and daily campus announcements. Mission Month involves lectures, presentations, performances, discussion and other events that celebrate the College's heritage as a Lasallian Catholic institution. However, the Mission Month Schedule of Events features Jewish and Muslim symbols along with a Catholic symbol and states the mission becomes alive by "encouraging our students of all faiths, cultures, and traditions. "

During the President's Mission Month Luncheon, the College honors one faculty member, one administrator, and one staff member with a Distinguished Lasallian award. Since 1987, the award is presented annually for individuals who exemplify the highest of Lasallian values to students, colleagues, and community members. According to the College's President, Brennan O'Donnell, adjunct faculty are not eligible for the Distinguished Lasallian Faculty of the Year Award, and the record reflects that an adjunct faculty member has never received an award.⁶

The College also organizes formation programs that are faculty development programs designed to educate and engage faculty and staff on how to incorporate its mission and Catholic principles and teaching into their role as educators. The formation programs are not mandatory for any faculty, including adjuncts. Additionally, the College's Provost, William Clyde, was unsure whether adjunct faculty were eligible to attend the College's flagship Rome formation program where faculty attend lectures and interact with other faculty from other Lasallian higher educational institutions at the Lasallian community's international headquarters in Rome, Italy.

The College holds itself out as providing a "broad liberal education." As such, in its undergraduate course catalog, it lists college-wide core goal and competencies for all academic programs as effective communication; critical thinking; information and technology literacy; quantitative and scientific literacy; independent and collaborative work; global awareness; and, religious and ethical awareness. With these competencies, the College hopes that graduating students will be able to, among other things, "assess conduct and make decisions based on ethical concerns and transcendent moral values as articulated in Christianity and other religious and philosophical traditions" and "understand that Manhattan is a Catholic institution, committed to respect for individual dignity and justice."

As part of the University's core requirements, students must take nine credits of Religious Studies courses. Of those nine credits, three of them must be earned from one of a list of offerings in "Catholic Studies." The Catholic Studies courses are academic courses on the Catholic intellectual tradition and thought, but they do not require students to learn prayers, learn Catholic rituals, or express Christian faith. Three other credits are earned from a required freshman-year course entitled "The Nature and Experience of Religion." The remaining three credits are earned by taking a Global Studies or Contemporary Issues course, many of which do not involve Catholicism, including "Native American Religions," "Islam," "Non-Violent

⁶ On one occasion, the Director of Campus Ministry and Social Action received the award while teaching as an adjunct faculty member. However, the College lists her on the Distinguished Lasallian Administrator of the Year Award Recipient list and not under the Distinguished Lasallian Faculty of the Year Award list.

Revolution,” and “Yoga: Philosophy, Praxis, and Art.” Additionally, the College recently created a Catholic Studies minor for all students.

In order to be an accredited Catholic higher education institution, the College conducts a 10-year self-study that it submits to the Middle States Association of Colleges and Schools. The Association uses the self-study as part of its evaluation when determining whether the College will receive continued accreditation. The College’s most recent self-study report, *Manhattan College Renewing the Promise: Self-Study 2012*, consists of 200 pages and restates its mission statement, goals, and strategic plan. Following a Middle States Association site visit, the College prepared a 55-page Progress Report to demonstrate that it was implementing its strategic plan along with the Association’s suggestions. Based upon the College’s reports and the Association’s visits, the College was re-accredited.

Additionally, the College is also accredited from the Accreditation Board for Engineering and Technology (“ABET”) for its engineering departments. The College must submit self-study reports to ABET to demonstrate its compliance with ABET criteria and policies. The mechanical engineering report states that “[t]he mission of the Manhattan College School of Engineering is to prepare students for a productive and rewarding career in engineering or a related profession.” The Civil Engineering report states that the department and the College have the “goal of promoting moral values and developing students who exhibit ethical behavior” and that a “cornerstone of the School of Engineering is to develop lifelong learners as is included in the College mission statement.” The College communicates to ABET that its core competencies overlap with ABET requirements including social and ethical responsibility.

B. The Role of Adjunct Faculty within the College

Adjunct faculty are employed to provide instruction in individual courses. Unlike full-time faculty, they have no service or other responsibilities to the College. There is no expectation by the College that adjunct faculty stay on the campus or partake in any College events outside of class times but they are encouraged to hold office hours. Paul Dinter, an adjunct professor in the Religious Study department, described adjunct faculty as “a little like ghosts, they just kind of appear and disappear.” Adjunct faculty are not invited to department meetings and do not serve in the College’s senate, a college-wide body that deals with matters of college-wide concern.

Adjuncts are invited, but not required to attend, the annual convocation as well as various other campus events where President O’Donnell, Provost Clyde, and Vice President for Mission Brother Jack Curran testified that they articulate the College’s mission. There is no evidence that the College monitors whether adjuncts attend any of these events. Similarly, there is some evidence of adjunct faculty attending and participating in formation programs and other events, but the College acknowledges that those adjunct faculty members participate because of personal interest, and not because they are required to attend. The College also introduced evidence about its College Core Identity Seminar for first-year faculty, which was designed to educate first year faculty about how to integrate the College’s Catholic mission in their role as educators. But, as with the majority of the record evidence, adjunct faculty were not required to attend the seminars and there is no evidence that any adjunct faculty attended.

Lance Evans, Jeff Horn, and Moujalli Hourani, former and current department chairs, testified to the College's adjunct faculty hiring practices. The department chairs reiterated the hiring practices that are contained in the earlier 2011 record in this matter. The College hires adjunct faculty as the need arises due to student enrollment. The hiring process is decentralized and is undertaken by the chairs of the individual departments within the College where they will teach. Thus, there is no standard application procedure to follow.

Adjuncts are recruited through word of mouth, other graduate school program listservs, and job postings via the College's public website and other online job databases. Typically, adjunct applicants submit their curriculum vitae or academic transcripts, sometimes along with a proposed or prior syllabus, or prior evaluations. Additionally, potential applicants submit unsolicited resumes for consideration directly to the department chairs. If no position exists, department chairs retain the qualified resumes to fill positions as they become available. Thus, adjunct faculty members are frequently hired without the College creating a job posting. According to the Employee handbook, there is no requirement that the College hire adjunct faculty based on their ability to integrate the College's mission, but rather it "hires and retains personnel solely on the basis of their ability to perform their jobs."

On the Job Openings page on its website, the College states, "We expect our faculty, administration and staff to be knowledgeable about our mission and to make a positive contribution to that mission." The record contains recent job postings for five different adjunct faculty positions. The postings for adjuncts in Mathematics, Physics, Graduate Counseling Programs, and Biology departments do not reference the College's mission, religious nature, or any role that the adjunct would play in furthering the College's mission or religious nature. The Sociology department adjunct posting, however, states, "We are especially interested in faculty capable of fostering critical thinking and who are sensitive to Manhattan College's mission and commitment to social justice."

Similarly, job postings on HigherEdJobs.com for adjunct faculty positions do not reference the College's mission. For all the positions listed, the main requirements are a master's degree or Ph.D. and a demonstrated ability to teach the subject. There is no requirement concerning the adjunct faculty's role in creating or maintaining a religious educational environment. At the bottom of the postings is a disclaimer that states the College was founded by the Christian Brothers and due to the shortage of Christian Brothers, special consideration will be given to qualified Christian Brothers. However, the College also provides applicants with a 16-page report entitled, "Manhattan College: Lasallian, Catholic, and Independent" that states, "There is no intention on the part of the Board, the administration, or the faculty to impose church affiliation and religious observance as a condition for hiring or admission, to set quotas based on religious affiliation, to require loyalty oaths, attendance at religious services, or courses in Catholic theology."

After reviewing an applicant's file, department chairs will conduct interviews telephonically, in person, or both.⁷ Civil Engineering Department Chair Moujalli Hourani

⁷ President O'Donnell and Provost Clyde testified that they interview potential faculty applicants but the record is unclear as to how often, if at all, they interview prospective adjunct faculty. President O'Donnell initially stated that

testified that he would inform applicants that the College is a Catholic Lasallian institution and that it believes in the Catholic faith. The former Biology Department Chair Lance Evans testified that he would describe what the College's Lasallian heritage meant to him but he would refer applicants to the College's website to find out more information about the mission. Similarly, the former History Department Chair Jeff Horn testified that he tells applicants that the College has a Catholic heritage but that in the classroom, they will have academic freedom. If applicants wanted to know more information about the college's Lasallian heritage, the chair would direct them to the website. The department chairs uniformly testified that they do not tell potential adjunct faculty that they would be required to include a discussion of religion, Lasallian heritage or Catholic values in their courses. There is no evidence that the department chairs inquire about the applicants' religion.

If the College decides to hire an adjunct faculty member, the adjunct faculty must sign a Part-Time Faculty Salary Agreement. The College will also provide the faculty with a copy of the Green Book and a booklet titled "Manhattan College: An introduction to the Catholic Culture and to our Lasallian Heritage."⁸ (Introduction Booklet). In addition to setting forth the employee's salary, rank, and job duties, the Salary Agreement requires adjunct faculty to "fulfill the academic obligations of faculty members outlined in the Manhattan College Faculty Handbook and the Mission Statement of the College as they apply to part-time faculty." The adjunct faculty must also sign a document that contains the College's mission and states at the bottom, "I have read the mission statement of Manhattan College. I have read it, understand it, and have had the opportunity to ask any questions. I will abide by this document." New faculty must also sign receipts that are in the back of the Green Book and Introduction Booklet. Those receipts state, "I have received a copy of the Manhattan College and its Lasallian Catholic Mission book," and "I have read and respect the Lasallian culture of Manhattan College as reflected in this collection of documents."

The record evidence concerning the College's hiring and its mission statement is consistent with its Employment Application and "Sponsorship Covenant" detailed in the 2011 Decision. The Employment Application requires applicants to sign a statement that includes the sentence, "I will read and abide by the Mission Statement of Manhattan College." The Covenant maintains that in the hiring of faculty and staff, the College will "discuss the mission statement, the College's Catholic identity, and its Lasallian Tradition." In addition, the Covenant stated that all letters of appointment and employment contracts must include an "agreement to respect the College's Catholic identity and Lasallian tradition." Lastly, the Covenant provided an affirmative hiring statement concerning Christian Brothers: "the College considers a candidate's status as a Brother of the Christian Schools as a positive factor" in its hiring process.

he meets "with all finalists for faculty positions" but when asked if that includes adjunct faculty, he responded that he does not interview every adjunct faculty member. Similarly, Provost Clyde stated that he interviews potential faculty but also admitted that adjunct faculty members are generally hired and interviewed by department chairs and Deans. Because there is no evidence regarding how often the President and Provost meet with prospective adjuncts and there is testimony that the department chairs exclusively hire adjunct faculty, I am construing this testimony as inconclusive and merely anecdotal.

⁸ The booklet is detailed in p.13-14 of the earlier 2011 Regional Director's Decision in this matter.

There is a new adjunct orientation at the beginning of each academic year but adjunct faculty are not required to attend.⁹ President O'Donnell begins the orientation with a discussion of the importance of the mission and heritage of the institution and tells adjunct faculty to use the Green Book as a way to continue to acclimate themselves to the mission. President O'Donnell testified that he tells adjunct faculty that the College is a Catholic and Lasallian institution and that faculty are eagerly encouraged to contribute explicitly to the mission, or at least to respect it. He also discusses how faculty formation programs are linked to the College's identity as a Catholic and Lasallian institution. Similarly, Provost Clyde testified that he also emphasized the importance of the mission in his adjunct orientation remarks.

At a faculty orientation in 2014, new full-time faculty members received a document entitled "Manhattan College and Its Lasallian Catholic Heritage and Core Identity, New Faculty Orientation" designed to explore what it means for faculty to be a part of a Lasallian Catholic university. However, there was no evidence that this document was similarly presented at the new adjunct faculty orientation.

While the College throughout the hiring process informs its adjunct faculty members to support or at least respect the college's Catholic identity, a former member of the Board of Trustees, John Lawler, testified that participation in the Catholic mission is not mandatory.

Adjunct faculty are evaluated primarily by student evaluation forms although department chairs will also sit in on classes and solicit student feedback. The evaluation forms contain no criteria regarding creating or maintaining a religious educational environment, Lasallian Catholicism, the College's mission, or the adjuncts' adherence to any of the foregoing. Additionally, adjunct faculty members are not told that they would be evaluated poorly or terminated for not teaching Lasallian heritage and Catholic values. Department chairs provided corroborative testimony that they provide feedback to adjunct faculty but they do not include any comments about religious content, or lack thereof, or anything about the College's Mission or the adjunct's alleged role in it.

Adjunct faculty members design their own course, with the exception of some lab sections that have strict requirements. They alone are responsible for creating a syllabus, choosing textbooks, deciding whether the class is a lecture or seminar, and creating a final exam without the involvement of the College. No one from the College directs adjunct faculty to tie course material to the Catholic mission of the College, its Lasallian heritage, or the Catholic faith. Similarly, the College does not instruct adjunct faculty to proselytize or indoctrinate students, even in the Religious Studies department.

The College highlights to all faculty, including adjuncts that they have complete academic freedom in the classroom through its publications and adjunct faculty interviews. Thus, all faculty, including adjuncts, are free to teach concepts which are not in accordance with Catholic teachings and they cannot be disciplined or terminated for expressing their opinion. Accordingly, there is no evidence that adjunct faculty are disciplined or dismissed for conduct

⁹ The first orientation was in January 2011. Subsequent orientations were at the end of August in 2012, 2013, and 2014.

contrary to the Lasallian Catholic mission. Likewise, no adjunct faculty member was ever disciplined or told that they would be disciplined if they did not discuss the College's Lasallian heritage or Catholic values in their classes.

In Admissions documents, the College states that the faculty members are committed to the five core principles of the mission, which are symbolized by the five-point Lasallian star featured in its logo and on the documents themselves. The College does not differentiate between its adjunct and full-time faculty when it makes these representations. Similarly, Provost Clyde testified that the College informs faculty that they are responsible for achieving student proficiency in the college-wide core competencies, including "religious and ethical awareness," but did not testify as to how the College communicates this responsibility to adjunct faculty.

IV. Analysis

A. Applicable legal standard for religious exemption

In *NLRB v. Catholic Bishop of Chicago*, the Supreme Court overturned the Board's policy "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). 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 engagement in such inquiry would violate the First Amendment. *Ibid.* The Court 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.'" *Ibid.*, quoting *Lemon v. Kurtzman*, 403 U.S. 602 (1971). The "'admitted and obvious fact [is] that the raison d'être of parochial schools is the propagation of a religious faith.'" *Id.* at 503, quoting *Lemon*, 403 U.S. at 628 (Douglas, J., concurring).

In *Pacific Lutheran University*, the Board set forth a new standard in determining whether to assert jurisdiction over faculty members at self-identified religious colleges and universities. It adopted a new two-part standard. The Board will not decline to exercise jurisdiction over employees at a university that claims to be a religious institution unless the employer demonstrates that 1) it holds itself out as providing a religious educational environment, and 2) the employer holds the petitioned-for employees out as performing a specific role in creating or maintaining the university's religious educational environment. 361 NLRB No. 157, slip op. at 6-8.

The Board sets forth the threshold requirement that a university must hold itself out as providing a religious educational requirement. In so doing, it applies a test similar to that used by the D.C. Circuit in *University of Great Falls v. NLRB*, 278 F.3d 1335, 1343 (2002) and *Carroll College, Inc. v. NLRB*, 558 F.3d 568, 572 (2009). The Board applies a low threshold in determining whether or not there is even the potential to implicate First Amendment concerns of the bargaining unit. There is no need for an intrusive inquiry into the beliefs of a university but merely an examination of how it holds itself out to students, faculty, and the public. The first

prong of the *Pacific Lutheran* standard matches the first two steps of the D.C. Circuit's tripartite test for exemption from Board jurisdiction, namely the institution holds itself out to students, faculty, and community as providing a religious educational environment and is organized as a nonprofit institution. *Id.*, slip op. at 7. See *Great Falls* and *Carroll College*, above. The Board finally does not adopt the requirement set forth in *Great Falls* and *Carroll College* that a university be "affiliated with, or owned, operated, or controlled, directly or indirectly, by a recognized religious organization" *Pacific Lutheran*, above, slip op. at 7.

In examining how an institution holds itself out, the Board will give more weight to contemporary self-presentation than to founding and historical documents. *Ibid.* 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 showing is "minimal," and "does not impose a heavy burden." *Id.*, slip op. at 7. The first part of the *Pacific Lutheran* test, how the employer holds itself out, is a threshold showing.

Once a university satisfies the initial threshold requirement, the analysis turns to how an institution holds out the petitioned-for employees. Again, the focus is on how the institution *holds out* these employees, avoiding an intrusive inquiry into the nature of the religious tenets of the institution or how effective it is at inculcating them. *Id.*, slip op. at 8. The Board "requires that [petitioned-for employees] be held out as performing a *specific religious function*." [Emphasis in original.] *Id.*, slip op. at 8. "[G]eneral or aspirational statements, without specificity as to how the requirement affects actual job functions, will not suffice." *Id.*, slip op. at 9. When the Board applied its new standard to the facts of Pacific Lutheran University, it found the statement in the faculty constitution that members "become a member of a community of scholars who respect and uphold the principles of Lutheran Higher Education" *Id.*, slip op. at 12 fn. 22, to be aspirational as it did not implicate actual job functions.

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 is 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 statements must demonstrate "a *connection* between the performance of a religious role and faculty members' employment requirements." [Emphasis in original.] *Id.*, slip op. at 9 n.14. Succinctly put, the Board's inquiry is "whether a reasonable prospective 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 College argues that the two-pronged test described above entails the same improper; unconstitutional inquiry as the Board's predecessor test and fails to avoid the entanglement that the Court in *Catholic Bishop* strove to avoid. Thus, the College 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 College as this argument must await consideration by the

Board. My obligation is to apply Board precedent and not to determine whether that precedent should be varied.

B. The College holds itself out as providing a religious educational environment

The College consistently identifies itself as a Lasallian Catholic institution and publicly describes those values as inspiring the education it provides. The College 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. It prominently features Catholic and Lasallian themes and symbols in many publically available programs and publications including content on its website.

The College provides regularly scheduled Catholic religious services on campus, albeit non-mandatory, and includes Catholic iconography throughout its campus. It sponsors religious activities and programs through its campus ministry office. Although these programs are not mandatory, they are widely publicized and participation is encouraged. Additionally, the College is organized as a non-profit institution. Based on the evidence, the College holds itself out as providing a religious educational environment and thereby meets the threshold requirement established in the *Pacific Lutheran University* standard.

C. The College does not hold the petitioned-for unit members out as performing a religious function

The record demonstrates that adjunct faculty are repeatedly informed, both before and after they are hired, that they are expected to be aware of and respect the College's religious mission. The College cited job advertisements, interviews, booklets, and public speeches by College leaders. However, these are the sort of generalized statements that the Board in *Pacific Lutheran* found insufficient. *See id.*, slip op. at 8 ("Generalized statements that faculty members are expected to, for example, support the goals or mission of the university are not alone sufficient"). These types of statements "give no indication that [adjunct] faculty members are expected to incorporate religion into their teaching or research, that faculty members will have any religious requirements imposed on them, or that the religious nature of the university will have any impact at all on their employment." *Ibid.* Even expecting all staff to "make a positive contribution" to the mission provides no guidance to what specific religious function adjunct faculty are required to perform. Further, the College equally stressed academic freedom of the faculty, which highlights "the message that religion has no bearing on faculty members' job duties or responsibilities." *Ibid.*

While there is extensive evidence in the record concerning the College's religious identity and its stated mission, adjunct faculty are not expected to advance the College's religious mission, other than respect and support it. Even the forms that are required to be signed when adjunct faculty are hired only demand that they read the mission statement and will respect the Lasallian culture of the College. There is no evidence that adjunct faculty are expected to further the mission by serving as religious advisors to students, propagating the Catholic faith, engaging in religious training, or conforming to the tenets of Catholicism in the course of their

job duties. Thus, the record fails to establish how the College's religious identity affects actual job functions.

The College emphasized the programming of its campus ministry office such as lecture series and faculty development formation programs. It is undisputed that all of these events and programs are optional and voluntary for the adjunct faculty. There is no evidence that adjunct faculty are required to participate in any of these events or programs, and there is no evidence that the College knows or tracks the participation of adjuncts in these programs. While the record revealed evidence that adjuncts have occasionally participated, the College acknowledged that they did because they were interested and not because they were required.

No employment applications or any of the job postings in the record include any statements that adjunct faculty must integrate the Lasallian Catholic mission into coursework, serve as religious advisors to students, propagate the Catholic faith, engage in religious training, or conform to the tenets of Catholicism in the course of their job duties. While the College posited there was an expectation that adjunct faculty support and respect its Lasallian Catholic mission, it acknowledged that all religious programming and events, even adjunct orientation, are optional. Department chairs uniformly testified that during the hiring and interview process, they do not inform adjunct faculty that they must adhere to or propagate any Catholic doctrine as part of their jobs. Only the Sociology job posting specifically mentioned the College's mission and it only required that potential applicants are sensitive to it—far short of showing a connection between performing a religious role and the job requirements. Additionally, although job postings from HigherEdJobs.com state that Christian Brothers will be given “special consideration,” the job postings do not require applicants to promote the College's mission or perform a specific religious function within the College's religious educational environment.

Further, while the College asserts that it holds out its faculty as maintaining its Lasallian Catholic mission through academic freedom, service, and promotion of ethical awareness and social responsibility, the Board in *Pacific Lutheran* explicitly rejected this argument. The Board stated, “requiring faculty members to comply with norms shared by both a religion and by wider society does not support a finding that faculty members are held out as performing any specific religious role.” *See id.*, slip op. at 9 (specifically referring to diversity and academic freedom). Here, the College holds out its adjunct faculty as performing a role that “they would be expected to fill at virtually all universities.” *Ibid.* For example, while the College asserts that it instructs its engineering adjunct faculty to teach its core competency of religious and ethical awareness, the evidence demonstrates that that ABET expects all universities, not just Catholic ones, to teach social responsibility and ethics in their engineering departments. Thus, holding out faculty in this manner does not satisfy the second prong.

Lastly, the College introduced an overwhelming amount of evidence of how it holds out its full-time faculty and how its full-time faculty members are expected to maintain the College's religious environment, including its Distinguished Lasallian awards, formation programs, and full-time faculty interviews. However, the petitioned-for unit is exclusively comprised of adjunct faculty and the record demonstrates that adjunct faculty are not subject to the same obligations as full-time faculty.

For these reasons, I find that the College has not met its burden of establishing that its faculty serve a specific role in creating or maintaining the College's religious educational environment. Therefore, the Board exercises jurisdiction over the College.

V. Conclusion

Based on the foregoing and the entire record herein, I direct that the ballots previously collected in this matter be opened and counted.

VI. Order

IT IS HEREBY ORDERED that the ballots previously impounded in this matter be counted and a tally of ballots issue.

VII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations,¹⁰ a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1015 Half Street SE, Washington, DC 20570-0001. This request must be received by the Board in Washington by **September 9, 2015**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so.

Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at New York, New York this 26 day of August 2015



Karen P. Fernbach, Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10278

¹⁰ Since the petition in this matter was filed prior to the implementation of the new Representation Case Rules, the case is being processed under the rules that were in effect before April 14, 2015. Therefore, all cites to sections of the Rules and Regulations refer to the rules in effect prior to April 14, 2015.