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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

SEATTLE UNIVERSITY,  
Employer,  
and  
SEIU LOCAL 925,  
Petitioner.

CASE 19-RC-122863

SEIU LOCAL 925's  
STATEMENT IN OPPOSITION  
TO REQUEST FOR REVIEW  
OF SECOND SUPPLEMENTAL  
DECISION AND ORDER

SEIU Local 925 opposes the request for review filed by the Employer, Seattle University (SU or the University). The University requests review of the Regional Director's Second Supplemental Decision and Order of August 17, 2015. In his Second Supplemental Decision, the Regional Director again ruled that the Board may properly assert jurisdiction over Seattle University under *Pacific Lutheran University*, 361 NLRB No. 157 (2014) (herein sometimes referred to as *PLU*). The Regional Director thoughtfully and carefully analyzed the evidence and correctly applied the *PLU* jurisdiction standard to the facts of this case. The University's request for review does not establish a basis for review and, under Section 102.67(c) of the Board's Rules and Regulations, the Board should deny the request for review and affirm the Regional Director's Supplemental Decision and Order.

**I. Background**

In *Pacific Lutheran University, supra*, the Board reexamined Board and court precedent under *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979) with respect to the exercise of jurisdiction over self-identified religious colleges and universities. The Board articulated a new

SEIU LOCAL 925's STATEMENT IN OPPOSITION TO REQUEST FOR REVIEW  
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DOUGLAS DRACHLER  
MCKEE & GILBROUGH  
LLP

ATTORNEYS

Securities Bldg, Suite 1030  
1904 Third Avenue  
Seattle, WA 98101  
206-623-0900  
Fax: 623-1432

1 two-part test to be used in place of its former “substantial religious character” test. This *PLU* test  
2 avoids intrusive inquiry into a university’s religious beliefs and protects employee rights under  
3 federal labor policy. The Board enunciated the two-part test as follows:

4 [w]e will not decline to exercise jurisdiction over faculty members at a college or  
5 university that claims to be a religious institution unless it first demonstrates, as a  
6 threshold matter, that it holds itself out as providing a religious educational  
7 environment. Once that threshold is met, the college or university must then show  
8 that it holds out the petitioned-for faculty themselves as performing a specific role  
9 in creating or maintaining the college or university’s religious educational  
10 environment.

9 *Pacific Lutheran University*, 361 NLRB slip op. at 6.

10 As set forth in the Regional Director’s Second Supplemental Decision, following  
11 issuance of the *PLU* decision the Board twice remanded this case to the Region. The second  
12 remand directed the Regional Director to reopen the record to permit the University to present  
13 evidence in support of its position that it holds out the petitioned-for faculty as performing a  
14 specific religious function. The University was given that opportunity and, as the Regional  
15 Director determined, the University failed to meet its burden to show that it meets the second  
16 prong of the *PLU* standard. Instead, the University’s evidence on remand merely confirmed the  
17 Regional Director’s earlier finding that SU does not hold out the petitioned-for faculty as  
18 performing a specific religious function. The Regional Director again correctly determined that  
19 the Board may properly exercise jurisdiction over SU under the *PLU* decision. The University’s  
20 request for review should be denied.

22 **II. The Regional Director Correctly Asserted  
23 Jurisdiction Over Seattle University.**

24 **A. SU Offered No Legitimate Reason for the Board  
25 to Reconsider *Pacific Lutheran University*.**

1 Seattle University asserts that the Board’s decision in *Pacific Lutheran University* was  
2 wrongly decided and the Board should abandon that decision and fully adopt the test described  
3 by the court of appeals in *Carroll College v. NLRB*, 558 F.3d 568 (D.C. Cir 2009) and *University*  
4 *of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002). In coming to its decision in *PLU*, the  
5 Board engaged in a lengthy and thorough process involving the issuance of a notice and  
6 invitation to the parties and the public to file briefs on issues raised, which included the issue of  
7 Board jurisdiction over colleges and universities that self-identify as religious. Seattle  
8 University’s request for review does not raise anything that was not previously raised in the  
9 Board’s lengthy *PLU* process or carefully considered by the Board in issuing the *PLU* decision.  
10 Seattle University has not offered a compelling or legitimate reason for the Board to revisit the  
11 *PLU* decision here, and its request in that regard must be denied.  
12

13 **B. The Regional Director Correctly Limited**  
14 **Evidence During the Hearing on Remand.**

15 The Board’s remand order was in response to SU’s request for review of the Regional  
16 Director’s Supplemental Decision of March 3, 2015. In that March 2015 Supplemental Decision,  
17 which followed the Board’s issuance of the *PLU* decision, the Regional Director found that SU  
18 met the first prong of the *PLU* standard but failed to meet the second prong. SU’s request for  
19 review of the March 2015 Supplemental Decision specifically acknowledged SU’s acceptance of  
20 the Regional Director’s ruling that SU meets the first prong of the *PLU* standard. SU Request for  
21 Review, March 17, 2015, page 8 (“The Regional Director came to the unavoidable conclusion  
22 that the University ‘holds itself out as providing a religious educational environment’”). The  
23 University specifically asked the Board to permit it to present evidence with respect to the  
24 second prong. SU Request for Review, March 17, 2015, page 23 (“The University did not offer  
25 any evidence or testimony addressing the specific role of the faculty members in creating or



1 objections to SU counsel’s inappropriate questions. SU filed a request for special permission to  
2 appeal the evidentiary ruling, which the Regional Director denied.

3 In its request for review of the Second Supplemental Decision, SU asserts that the  
4 Regional Director committed prejudicial error in denying its request for special permission to  
5 appeal. SU asserts, first, that the Board’s remand order and the Regional Director’s order  
6 reopening the record permitted it to present any evidence relevant under the entire *PLU* decision.  
7 In this regard SU asks the Board to ignore that the parameters of the grant of review and remand  
8 are defined by its own request for review and due process arguments. SU also asserts in its  
9 request for review that the Regional Director’s ruling deprived it of its ability to present evidence  
10 of “the faculty’s role within SU’s mission” and evidence of the faculty’s “functions in furthering  
11 SU’s purpose.” A reading of the record clearly shows that at no time was SU counsel prevented  
12 from asking questions about how the University holds out the faculty’s role and the faculty’s  
13 functions. As the hearing officer repeatedly advised during the hearing, SU counsel was  
14 permitted to ask those questions but not to ask question beyond the scope of that issue.  
15

16 The issue that SU raises on review with respect to the request for special permission to  
17 appeal is a contrived issue, and the Regional Director was correct in not expanding the scope of  
18 the remand hearing to include issues beyond those raised in SU’s March 2015 request for review.  
19

20 **C. The Regional Director Correctly Found that**  
21 **SU Did Not Meet Its Burden to Under the**  
22 **Second Prong of the *PLU* Test.**

23 The Regional Director faithfully and carefully followed the Board’s *PLU* decision and  
24 correctly found that SU failed to show that it holds out its faculty as performing a specific  
25 religious function. Following the Board’s direction, the Regional Director focused the inquiry on  
the petitioned-for faculty themselves, rather than the nature of the University as a whole, and the

1 Regional Director did not look behind publicly available documents and communications to  
2 inquire into the nature of religious tenets or examine the personal beliefs or values of individual  
3 faculty members. In conformance with the *PLU* decision, the Regional Director ruled that  
4 generalized and aspirational statements to the effect that faculty members are required to support  
5 the University’s mission, uphold Jesuit Catholic principles, or respect religious principles do not  
6 demonstrate that faculty members are required, as part of their jobs, to perform a specific  
7 religious function. Instead, as instructed by the Board, the Regional Director focused on written  
8 and oral communications that SU makes to prospective and current faculty members, prospective  
9 and current students, and the public. In examining those communications, the Regional Director  
10 followed the *PLU* analysis in determining whether those communications show a connection  
11 between the University’s religious environment and faculty members’ employment requirements.  
12 The Regional Director correctly found that SU failed to meet its burden and his decision should  
13 be affirmed.  
14

15  
16 **1. SU Does Not Represent that Its Non-Tenure  
Track Faculty Perform a Religious Function.**

17 The Board will decline jurisdiction over Seattle University “so long as the university’s  
18 public representations make it clear that faculty members are subject to employment-related  
19 decisions that are based on religious considerations.” *PLU*, 361 NLRB slip op at 10, fn 19.

20 The extensive record in this case contains just the kind of evidence that the Board in *PLU*  
21 said should be considered in determining how a university holds out its petitioned-for  
22 employees: accreditation documents, job postings, appointment letters, employment contracts,  
23 performance reviews, and faculty handbooks, as well as written and oral communications to  
24 prospective and current faculty and students and communications to the public. The Regional  
25 Director examined these communications and correctly determined that they do not show that

1 Seattle University holds out its non-tenure track faculty as performing, as part of their jobs, a  
2 specific religious function. The Regional Director correctly found, and Seattle University does  
3 not dispute, the following facts: SU's job postings state that SU does not discriminate on the  
4 basis of religion; SU's job postings and appointment letters identify SU as a Catholic Jesuit  
5 institution but do not otherwise mention God, Christianity, Catholicism, or Jesuits; SU's job  
6 postings and appointment letters do not advise faculty members that they must integrate religious  
7 tenets into their coursework; SU's interview guidelines mandate that it is unacceptable to ask  
8 interviewees questions about religion or creed; SU has no requirement that faculty members be  
9 Catholic or Christian; SU's non-tenure track employment contracts do not refer to religion or a  
10 religious function; SU's faculty handbook description of the "specific responsibilities" of faculty  
11 members does not include any reference to a religious role or function; SU's faculty handbook  
12 description of the critical ingredient of "faculty quality" cites "teaching excellence" and does not  
13 mention God or adherence to any doctrine; while SU's mission statement or "Jesuit values" may  
14 be mentioned at some faculty interviews, there is no evidence that any non-tenure track faculty  
15 members are informed that the jobs for which they are applying include the performance of a  
16 specific religious role; neither SU's student evaluations of faculty performance nor any other SU  
17 evaluations of faculty performance include review of performance of a religious function; SU  
18 provided no evidence that its non-tenure track faculty are required to serve as religious advisors  
19 to students, propagate religious tenets, conform to tenets of the Catholic religion, or engage in  
20 religious training. All of these representations by SU about the nature of its faculty members'  
21 duties and responsibilities led the Regional Director to correctly conclude that SU does not  
22 represent that its non-tenure track faculty perform a specific religious function.  
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SEIU LOCAL 925's STATEMENT IN OPPOSITION TO REQUEST FOR REVIEW  
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DOUGLAS DRACHLER  
MCKEE & GILBROUGH  
LLP

ATTORNEYS

Securities Bldg, Suite 1030  
1904 Third Avenue  
Seattle, WA 98101  
206-623-0900  
Fax: 623-1432

1 In addition to the particular facts cited by the Regional Director, the relevant documents  
2 and communications also show that SU conveys to its constituents that it is “explicitly and  
3 officially” autonomous from the Catholic church [Er Ex 71] and that the University “operat[es]  
4 independent of the Catholic Church or Society of Jesus.” U Ex 4 p 56. In this light, when non-  
5 tenure track faculty are recruited and hired, the job postings, applications, interviews, and job  
6 offers do not include references to any religious role that the applicant will be expected to fill.  
7 Stork, 1766-1767, 1770-1771; Hepfer, 1785; CodyKramers, 1803-1806; Veith, 1092. The faculty  
8 handbook does not describe any specific religious function that non-tenure track faculty  
9 members are expected or required to perform. Er Ex 3. Non-tenure track faculty members are not  
10 told that they have responsibilities related to their students’ spiritual or religious development  
11 [Stork, 1772; Hepfer, 1791, CodyKramers, 1808], and there is no religious expectation related to  
12 course content. Cushnie, 959, 1008; Ng, 1038; Veith, 1099. Feedback that faculty members  
13 receive does not cover religion or the performance of religious roles. Stork, 1773-1774; Hepfer,  
14 1792; CodyKramers, 1810. These communications, like those cited by the Regional Director,  
15 represent to prospective and current faculty that the duties and responsibilities of SU’s non-  
16 tenure track faculty do not include performance of a religious function.  
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19 SU also represents that it adheres to federal law with respect to discrimination and does  
20 not discriminate on the basis of religion. Er Ex 3, sec 10.2; Er Ex 46, 13.1; U Ex 59, cover page;  
21 Cushnie, 944; Crawford, 1652-1653, 1667. SU embraces diversity, including diversity of belief  
22 systems. U Ex 4, p 38. SU’s student handbook represents to students that SU is “a university that  
23 welcomes and promotes free dialogue among persons of diverse religious and intellectual  
24 traditions.” U Ex 59, page 9. SU reported in its Three-Year Self-Evaluation Report to its  
25 accreditation agency that it is committed to “a diverse work environment and campus culture”

1 and “actively seeks to have a diversity of ideas examined thoughtfully and in depth by its  
2 faculty.” U Ex 4, p 39, 46. Similarly, SU’s faculty handbook and its Three-Year Self-Evaluation  
3 Report represent that SU “employs teachers and administrators without regard to religious  
4 affiliation and respects the religious beliefs and practices of all individuals.” U Ex 4, p 83-84.  
5 The faculty handbook also provides for an internal complaint mechanism for employees to use if  
6 they feel they have suffered discrimination, but that mechanism is not exclusive, and  
7 governmental processes are also available to employees. *Id.*

9 SU not only represents that it is committed to diversity but also represents that it is  
10 committed to academic freedom, which President Sundborg described as “the right of the faculty  
11 of the University to pursue truth without hindrance within the area of their competency.”  
12 Sundborg, 1558. The faculty handbook advises faculty that under the banner of academic  
13 freedom teachers “are free to discuss their academic subjects, including their broadest  
14 implications in a climate of openness, freedom, and mutual respect, joined with a respect for the  
15 character and aims of Seattle University as described in the mission statement.” Er Ex 3, page  
16 34.

18 When addressing new students at orientation, the director of the core curriculum, Dr.  
19 Philpott, makes a point of letting students know that SU is not trying to turn them into Catholics.  
20 Philpott, 881. SU advertises that it provides space and programs for all students who have a faith  
21 tradition, including Jewish and Muslim students, as well as those who do not. U Ex 14.  
22 Similarly, University accreditation documents forswear any religious function performed by its  
23 faculty. In its Three-Year Self-Examination Report, SU reports that it “does not seek to instill a  
24 specific belief system, world view or statement of belief” in its students. U Ex 4, p 80.  
25



1           Despite these clear rulings in *PLU*, the University argues in its request for review that its  
2 mission statement (“Seattle University is dedicated to educating the whole person to professional  
3 formation and to empower leaders for a just and humane world”) and other general or  
4 aspirational statements<sup>2</sup> should be held to represent that SU’s non-tenure track faculty perform a  
5 specific religious function. SU argues, in broad sweeping terms, that such statements  
6 communicate to existing and prospective faculty members that “their participation in the mission  
7 is integral and required,” and that “the mission affects their job duties and impacts their  
8 employment.” SU similarly argues, with no specificity, that each faculty member “is expected to  
9 maintain Seattle University’s religious environment.” None of SU’s general and aspirational  
10 statements contain any specificity as to how the statements affect faculty members’ actual job  
11 functions. And SU provided no even marginally specific examples of having communicated to  
12 non-tenure track faculty members (or to anyone else) any connection to non-tenure track faculty  
13 members’ actual job duties and responsibilities. Particularly combined with SU’s commitment to  
14 diversity and academic freedom, which “put forth the message that religion has no bearing on  
15 faculty members’ job duties or responsibilities” [*PLU* 361 NLRB, slip op at 8], SU’s general and  
16 aspirational statements are ineffective in showing that faculty are held out as performing a  
17 specific religious function.  
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20                           **3.       The Board Should Reject SU’s Plea that It**  
21                           **Look Behind SU’s Public Representations**  
22                           **to Examine Catholic Religious Beliefs.**

23 \_\_\_\_\_  
24 <sup>2</sup> SU identifies itself as a Catholic Jesuit institution and argues that, as such, it has “Catholic inspiration,”  
25 according to a 1990 papal document called *Ex Corde Ecclesiae*. The SU faculty handbook states that by  
accepting a teaching position at SU the faculty member becomes “committed to the University’s mission”  
which is carried out with “an acknowledgment of or a respect for [SU’s] Catholic religious and cultural  
tradition.” Er Ex 3, p 10-11. The Board found similar general and aspirational statements in *PLU* did not  
convey that faculty members perform a specific religious function.

1 The “holding out” aspect of the second prong of the *PLU* test avoids examination of an  
2 organization’s religious beliefs, eliminates the need for a university to explain its beliefs, does  
3 not permit the Board to decide issues of religious doctrine, and protects employee rights under  
4 federal labor policy by examining a university’s representations of itself and its faculty, which  
5 puts the organization “to the proof of its bona fides.” *PLU* 361 NLRB, slip op at 10, fn 18, 19  
6 (internal citations omitted). The Board does not look behind a university’s public representations  
7 for an explanation as to how those representations relate to institutional beliefs or belief systems.  
8 Nor are the personal beliefs or values of a particular faculty member relevant to the inquiry if  
9 those beliefs or values are unrelated to the performance of assigned job duties. *PLU* 361 NLRB,  
10 slip op at 9, fn 14. In *PLU* the Board specifically stated that it would not examine the religious  
11 beliefs or practices of faculty members, students, administrators, or the institution itself. *PLU*,  
12 361 NLRB slip op at 10.

14 As set forth above, SU represents to faculty, students, and the public that it is “explicitly  
15 and officially” autonomous from the Catholic church and “operat[es] independent of the Catholic  
16 Church or Society of Jesus.” Er Ex 71; U Ex 4 p 56. SU represents that it does not seek to turn its  
17 students into Catholics [Philpott, 881] and “does not seek to instill a specific belief system, world  
18 view or statement of belief” in its students. U Ex 4, p 80. SU’s mission statement and other  
19 aspirational statements, particularly in light of its commitments to diversity and academic  
20 freedom, do not convey that non-tenure track faculty members perform a specific religious  
21 function. Nevertheless, SU asks the Board to look behind the secular words in its mission  
22 statement and other public representation to examine Catholic beliefs and individual witnesses’  
23 definitions of non-religious terms. SU argues in essence that an investigation into Catholic  
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1 beliefs will compensate for its lack of evidence that it holds out its non-tenure track faculty as  
2 performing a specific religious function.

3 Thus, although the words of the mission statement (“whole person” and “just and humane  
4 world”) do not themselves impart a religious message, SU’s President Sundborg and Provost  
5 Crawford testified that they believe the mission statement is a religious statement and reflects a  
6 religious purpose. Sundborg, 1522, 1525; Crawford, 1630. President Sundborg also testified that  
7 SU’s commitment to the “pursuit of truth” is a Catholic religious concept. Sundborg, 1516, 1521.  
8 Similarly, Provost Crawford testified that if examined within the Catholic Jesuit belief system  
9 the “mandate of academic freedom” is religious. Crawford, 1670.

11 The implication in an examination of the Catholic Jesuit belief system, SU asserts, is that  
12 any faculty-related reference to the mission statement, whole person, social justice, pursuit of  
13 truth, or academic freedom is a religious reference, and any action that faculty members take in  
14 reference to these is the performance of a specific religious function, whether the action is taken  
15 as part of a faculty members’ job duties and responsibilities or not. For example, SU witnesses  
16 testified that some faculty members have, apart from their teaching duties, voluntarily engaged  
17 students in laudable projects that serve underprivileged groups. E.g., Bee, 1734-1736; Quinn,  
18 1759. Such projects are sometimes advertised to students and the public, albeit not in religious  
19 terms. Er Ex 106, 107,108. There is no evidence that any such activities are part of faculty  
20 members’ assigned duties and responsibilities, and there is no evidence that such service projects  
21 are inherently religious, have a religious message, or include religious leaders. While these  
22 projects on their face may objectively be said to come under the purview of SU’s facially secular  
23 social justice goal, SU asserts that under the Catholic Jesuit belief system they are religious  
24 activities. In this regard, SU also asserts that the personal and subjective beliefs ascribed to by  
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1 some faculty members who engage in social service projects imbue the projects with religious  
2 meaning.

3 Seattle University urges the Board to do precisely what the *PLU* decision prohibits:  
4 examine religious beliefs and decide issues of religious doctrine in circumstances where public  
5 representations do not specify that religious beliefs and doctrine affect faculty members' actual  
6 job functions. The Board should reject SU's request that it become embroiled in examining and  
7 determining religious beliefs. The Board should reject SU's request that it evaluate the personal  
8 motivations of faculty members, particularly in their activities outside of their assigned duties.  
9 The Board should, as it so clearly held in *PLU*, decline jurisdiction on First Amendment grounds  
10 only where the institution's "public representations make it clear that faculty members are  
11 subject to employment-related decisions that are based on religious considerations." *PLU*, 361  
12 NLRB slip op at 10, fn 19.<sup>3</sup>

14 **4. SU Has Not Shown that Its Non-Tenure**  
15 **Track Faculty Members' Job Duties are**  
16 **Different From Those at Any Other University.**

17 To avoid NLRB jurisdiction on First Amendment grounds, an institution must show, in  
18 its public representations, something more than that faculty members perform the role they  
19 would be expected to perform at virtually all universities. *PLU* 361 NLRB, slip op at 9.

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20 <sup>3</sup> In its request for review, Seattle University makes much of a Union witness's testimony that the Jesuits  
21 "think everything has religious meaning." *SU Request for Review*, August 31, 2015, at pages 20 and 40.  
22 While the hearing officer correctly stated that this witness was not being held out as an expert on the  
23 Jesuit institution, the witness's testimony was not unlike that of President Sundborg, who testified that  
24 Catholics believe "God is everywhere" [Sundborg, 1564-1565] and that of Dean Quinn who testified,  
25 "The Jesuits want to believe everybody's on a spiritual journey, whether they know it or not." Quinn,  
1760-1762. For the University to rely on such testimony to assert that anything an SU faculty member  
does is, under the Catholic belief system, a specific religious function is particularly absurd in that it asks  
the Board to stop at the University's gates, when taken to its logical conclusion SU's argument would  
render every activity performed by every citizen of the earth a specific religious function within the  
meaning of *PLU*.

1 Representations that a university requires its faculty members to comply with norms shared by  
2 both a religion and by wider society do not convey that faculty members perform a specific  
3 religious role, rather than a role that they would be expected to fill at virtually all universities. *Id.*  
4 Representations that the university ascribes to the widely shared commitments to academic  
5 freedom and diversity convey that religion has no bearing on faculty members' job duties or  
6 responsibilities and that the faculty members' functions are the same at that university as they are  
7 at any university. *PLU 361 NLRB*, slip op at 8, 9-10 fn 16, 15.

9       As set forth above, SU relies heavily on its mission statement and its explanations of the  
10 mission statement to support its argument that any faculty member working under that mission  
11 statement is performing a specific religious function. The evidence shows, however, that the  
12 mission statements of public universities in the state of Washington are remarkably similar to  
13 Seattle University's in that they convey the public universities' commitments to whole persons  
14 and to social justice. The University of Washington's [UW's] mission statement states, "To  
15 promote their capacity to make humane and informed decisions, the University fosters an  
16 environment in which its students can develop mature and independent judgment and an  
17 appreciation of the range and diversity of human achievement." The UW mission statement says  
18 that one of UW's purposes is to "disseminate knowledge . . . through public service" and that the  
19 UW has a long tradition of educating students "toward achieving an excellence that well serves  
20 the state, the region, and the nation." U Ex 94. Washington State's [WSU] mission statement  
21 says that WSU mentors students to "realize their highest potential"; is "committed to its . . .  
22 tradition of service to society"; and "demonstrates trust and respect for all persons and cultivates  
23 . . . integrity." U Ex 91. See also U Ex 93 (Western Washington University "bring[s] together  
24 individuals of diverse backgrounds and perspectives [and] develops the potential of learners and  
25

1 the well-being of communities) and U Ex 92 (Central Washington University emphasizes public  
2 service; seeks to “empower each person”; is “a place that enables people to grow and prosper”;  
3 and “as a publicly-funded university . . . has a responsibility to help address the social and  
4 economic challenges faced by our communities.”)<sup>4</sup> Also as set forth above, other of SU’s public  
5 representations show that it subscribes to widely shared commitments to academic freedom,  
6 diversity, and social justice, which, like its mission statement, are aspirational norms shared by  
7 wider society.

8  
9 SU mission statement and its public representations, including those about diversity,  
10 academic freedom, and social justice convey nothing to indicate its non-tenure track faculty have  
11 duties and responsibilities different than those of faculty members at virtually all other  
12 universities. The Board should reject the University’s argument that its policies with respect to  
13 diversity, academic freedom, and social justice are representations that its non-tenure track  
14 faculty members perform a specific religious function.

15 **D. The Regional Director Correctly Asserted Jurisdiction**  
16 **Over SU’s Full-Time Non-Tenure Track Faculty.**

17 “In the alternative” to its above argument with respect to all non-tenure track faculty  
18 members, SU asserts in its request for review that its representations show its full-time non-  
19 tenure track faculty members perform a specific religious function. In support of this position SU  
20 asserts that full time non-tenure track faculty members attend, in their first year, a two day “new  
21 faculty institute” orientation at which President Sundborg gives a welcoming speech in which he  
22 refers to the University’s Catholic Jesuit inspiration. SU also asserts, although the evidence  
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24 <sup>4</sup> In concession to the fact that SU’s mission statement does not on its face convey religious meaning, SU  
25 President Sundborg testified, “So could there be the same statement at another University? There might  
be. But it would mean something different. So I mean, it’s not simply what the words are and what the  
ones on that (sic). But it’s what the whole – what gives meaning to those words.” Sundborg, 153-154.

1 establishes otherwise, that full time non-tenure track faculty members are asked in job interviews  
2 about the mission statement.

3           There is no evidence that President Sundborg’s speech at the orientation event suggests  
4 that full time non-tenure track faculty members’ job duties or responsibilities include specific  
5 religious functions or that full-time non-tenure track faculty members’ duties and responsibilities  
6 are different from the job duties and responsibilities of other non-tenure track faculty members.

7  
8 And there is no evidence that, even if the subject of the mission statement does come up in some  
9 job interviews, job applicants are told that if they are hired they will be required to perform a  
10 specific religious function.

11           In connection with its argument that full time non-tenure track faculty members are  
12 different from part-time non-tenure track faculty members, SU asserts what appears to be the  
13 bottom line in its position on jurisdiction: “The religious function of the faculty is to teach at a  
14 Catholic and Jesuit university, a critical role without which the University would not exist.” SU  
15 Request for Review, August 31, 2015 at page 43. In essence, this argument is that a university’s  
16 religious educational environment alone should cause the Board to decline to assert jurisdiction  
17 and thereby deny faculty members their right to vote on whether to be represented by a union.  
18 The Board rejected this argument in the *PLU* decision and should reject it here.

19  
20           **E.       The Regional Director Correctly Asserted Jurisdiction Over**  
21           **Faculty Who Teach Courses That Touch on Catholic Theology.**

22           The Regional Director found no evidence to support SU’s position on non-tenure track  
23 faculty members who teach core curriculum<sup>5</sup> or other courses that at least in some part touch on

24  
25 <sup>5</sup> The core curriculum was covered in detail at the hearing. Although SU’s request for review is unclear  
on the point, the record establishes that SU students must take two core classes in the subject of religion  
and that about two credit hours of one of those two classes must be an introduction to Catholicism.  
Sundborg, 1548; Crawford, 1605.

1 Catholic theology. SU refers to these faculty members in its request for review as “Catholic  
2 theologians” and asserts that they are all outside the scope of Board jurisdiction because they are  
3 “required to comply with *Ex Corde Ecclesiae* and the Application by, *inter alia*, ‘receiving a  
4 mandate from the local archbishop that they are in communion with the Catholic church in their  
5 teaching at that university.’” SU Request for Review, August 31, 2015 at page 46. SU argues that  
6 this alone should cause the Board to exclude these faculty members from the petitioned-for  
7 bargaining unit, although SU gives no explanation why this alone should dictate that result,  
8 except for an obtuse suggestion that it reflects a specific religious function.  
9

10         The record establishes that although SU does not formally track the religious affiliations  
11 of its faculty members, President Sundborg was aware at the time of the hearing that some of the  
12 individuals who teach core courses that have Christianity or Catholicism as part of the course  
13 content are Catholic, some are not. Sundborg, 1539-1540. Either way, like those who teach other  
14 subjects, they are required to teach their subject matter accurately. Sundborg, 1541. The *Ex*  
15 *Corde Ecclesiae* documents to which the request for review refers describe a “mandatum” as a  
16 document between a bishop or archbishop and an individual Catholic who teaches about the  
17 Catholic religion in certain higher education institutions. Er Ex 82, 83; Sundborg, 1537, 1539.  
18 The bishop or archbishop is instructed to offer a mandatum to faculty members who are both  
19 Catholic and teach about the Catholic faith, and the faculty member may sign the mandatum to  
20 witness that he or she “is in communion with the Catholic church.” Id. The University, which as  
21 set forth above publicly represents that it is “explicitly and officially” autonomous from the  
22 Catholic church and “operat[es] independent of the Catholic Church or Society of Jesus” [Er Ex  
23 71; U Ex 4 p 56], is not a party to a mandatum. Moreover, an offered mandatum is confidential  
24 and remains in the possession of the archbishop. Sundborg, 1539, 1541, 1543.  
25

1 As the Regional Director correctly points out, there is no evidence that SU has made the  
2 mandatum requirement its own, that it enforces a mandatum requirement or, more importantly,  
3 that it represents to faculty, students, or the public that the mandatum even exists. SU's request  
4 that the Board exclude Catholic non-tenure track faculty members who teach courses which  
5 touch on Catholic theology should be denied.

6  
7 **F. The Regional Director Correctly Asserted Jurisdiction  
Over Faculty in SU's School of Theology and Ministry.**

8 The Regional Director found that Seattle University did not present evidence that it holds  
9 out its non-tenure track faculty who teach classes in the school of theology and ministry (STM)<sup>6</sup>  
10 as performing a specific religious function in furtherance of SU's religious mission. As the  
11 Regional Director's decision reflects, while the title of the school may suggest a religious  
12 function and witnesses referred to STM as in part a "seminary," STM marketing materials and  
13 website pages downplay the Catholic Jesuit identity that SU asserts is all-pervasive in its other  
14 schools and colleges. As the Regional Director's decision also reflects, the evidence that SU  
15 offered with respect to STM does not show that STM non-tenure track faculty members are  
16 subject to employment related decisions that are based on religious, rather than subject matter,  
17 considerations.

18  
19 Many STM courses do not have "religion" as their subject matter, and for those STM  
20 courses that are about religion, there is no evidence of representations that faculty members are  
21 assigned to instill belief systems in their students or to lead their students to accept certain  
22 religious tenets as their own, as they would in a religious school. To the contrary, STM  
23 advertises itself as "dedicate[ed] to interreligious relationships for the common good" and  
24

25  

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<sup>6</sup> As the Regional Director notes in his decision, there are seven faculty members within the petitioned-for bargaining unit who teach in this school.

1 advertises that its faculty represents not only Christian denominations, but also Jewish and  
2 Muslim faith traditions and non-denominational groups. Er Ex 97, p 2. STM representations of  
3 itself stress that it is designed to “engage all people of faith, no matter what their orientation,”  
4 and that it has a “systematic outreach to non-Christian religions.” Markuly, 1689. While some  
5 faculty members at STM are in fact ministers in various faith traditions, they are hired on the  
6 basis of their subject matter expertise rather than on the basis of their religiosity [Markuly,  
7 1685], and they clearly are not serving in ministerial capacities in their faculty positions.<sup>7</sup>

9 All of the facts that led the Regional Director to find that SU does not hold out its other  
10 non-tenure track faculty as performing a specific religious function apply also to the non-tenure  
11 track faculty who teach in STM. SU’s accreditation documents, job postings and appointment  
12 letters, employment contracts and performance reviews, faculty handbooks, and public  
13 communications do not convey that STM faculty perform a specific religious function. SU  
14 communications that it does not discriminate on the basis of religion and is committed to  
15 academic freedom and social justice apply equally to STM and are not consistent with a finding  
16 that STM non-tenure track faculty members perform a specific religious function.

18 Just as there is no evidence of a single communication to a non-tenure track faculty  
19 member (or to anyone else) that a specific religious function is part of the duties and

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21 <sup>7</sup> In distinguishing between faculty who are represented as performing a religious function and those who  
22 are not, the Board in *PLU* cited *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 132  
23 S.Ct. 694 (2012), in which the employer held out a faculty member as a minister and, in performance  
24 reviews, reviewed her “skills of ministry” and “ministerial responsibilities.” Although not in the NLRB  
25 context, the Supreme Court in *Hosanna-Tabor* instructed that these representations established a  
connection between the performance of a religious role and the faculty member’s employment  
requirements and therefore “reflected a role in conveying the Church’s message and carrying out its  
mission.” *PLU* at 11. There is no evidence that STM faculty members, whether they are employed as  
ministers in their other aspects of their lives or not, are employed at STM to convey a Catholic Jesuit  
message or carry out a Catholic Jesuit mission.

1 responsibilities of the job, there no evidence of such communication that faculty members who  
2 teach classes in STM perform a specific religious function. While STM’s school-specific mission  
3 statement does mention God, the statement is aspirational and includes nothing that would, in the  
4 words of the *PLU* decision, “specify how the mission or goal of the university affects a faculty  
5 member’s actual job functions.” Other school-specific documents stress that STM does not  
6 discriminate on the basis of religion in any of its employment-related policies and practices and  
7 that STM adheres to SU’s non-discrimination policy. Er Ex 96, p 41.  
8

9 While the focus of the hearing on remand was on whether SU holds out its non-tenure  
10 track faculty to students, faculty, and the public as performing a specific religious function, the  
11 evidence that SU provided with respect to STM is largely evidence about STM’s overall  
12 ecumenism, purpose, and partnerships with religious denominations, as well as the breadth and  
13 depth of its course offerings in terms of religious variability, rather than about any specific  
14 religious function the non-tenure track faculty perform. SU offered no STM non-tenure track  
15 faculty job postings, employment contracts, or performance evaluations, and no STM non-tenure  
16 track faculty members testified as to what they are told in the interview and hiring process about  
17 the duties and responsibilities of the positions for which they are being considered.  
18

19 There is no evidence that non-tenure track faculty in STM serve as religious advisors to  
20 students,<sup>8</sup> or propagate religious tenets (as opposed to teaching courses about those tenets), or are  
21 required as part of their jobs to conform to particular religious tenets. The record shows that the  
22 only “tenets” STM faculty are required to conform to are those educational norms shared with  
23

24 \_\_\_\_\_  
25 <sup>8</sup> SU’s request for review points to testimony that STM faculty advise students on courses that various denominations or faith traditions require for application to their ministries. There is no evidence that non-tenure track faculty members engage in this activity or that the activity itself is religious as opposed to, as the Regional Director suggested, mechanical.

1 virtually all other universities: diversity, including diversity of belief systems, academic freedom,  
2 and social justice.

3 The Regional Director correctly concluded that SU did not meet its burden of showing  
4 that the non-tenure track faculty members who teach classes in STM are held out as performing a  
5 specific religious function in furtherance of SU's religious educational environment. The  
6 University's request for review should be denied.

7  
8 **III. A New Election is Not Appropriate.**

9 In its request for review, SU asserts that if the Board concludes that some employees in  
10 the petitioned-for unit are not properly included in the unit, "absent a mechanism to link votes  
11 with their voters," the Board should order a new election. Request for Review, August 31, 2015 at  
12 page 47. The election conducted in this case was a mail ballot election. The mail ballot return  
13 envelopes carry the name of the voter whose ballot is inside. The ballots were impounded and  
14 have therefore not been removed from their return envelopes, which is a process that takes place  
15 during the vote count when parties are given an opportunity to challenge individual voters by  
16 name. SU's concern that it will not be able to identify individual voters is unfounded. Its request  
17 for a new election should be denied.

18  
19 **IV. Conclusion.**

20 In its March 2015 request for review SU asked the Board to remand this case to the  
21 Regional Director so that SU could present evidence of representations that its non-tenure track  
22 faculty members perform a specific religious function as part of their job duties and  
23 responsibilities. The case was remanded and the hearing reopened, but SU provided no such  
24 evidence. Instead, SU continues to press its position that the Board should decline to assert  
25



1 **CERTIFICATE OF SERVICE**

2 I certify that on the 8<sup>th</sup> day of September 2015, a copy of this document was  
3 electronically filed with the National Labor Relations Board via the NLRB E-Filing system and  
4 is being served upon the following persons by electronic mail as follows:

5 Ronald K. Hooks, Regional Director  
6 NLRB, Region 19  
7 2948 Jackson Federal Building  
8 915 Second Avenue  
9 Seattle, WA 98174  
10 Email: [Ronald.hooks@nlrb.gov](mailto:Ronald.hooks@nlrb.gov)

Matthew W. Lynch, Esq.  
Sebris Busto James  
14205 SE 36<sup>th</sup> Street, Suite 325  
Bellevue, WA 98006  
Email: [mlynch@SebrisBusto.com](mailto:mlynch@SebrisBusto.com)

11 Dated: September 8, 2015.

12 /s/ Paul Drachler

13 **DOUGLAS DRACHLER MCKEE & GILBROUGH, LLP**  
14 1904 Third Ave, Suite 1030  
15 Seattle, WA 98101  
16 206-623-0900  
17 206-623-1432 (facsimile)