

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

In the Matter of

MANHATTAN COLLEGE,

Employer,

- and -

Case No. 2-RC-23543

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

Petitioner.

**PETITIONER'S STATEMENT IN OPPOSITION TO
EMPLOYER'S REQUEST FOR REVIEW**

On September 9, 2015, the Employer filed a request for review of the Regional Director's well-founded Supplemental Decision and Order issued on August 26, 2015. In accordance with Section 102.67 of the National Labor Relations Board ("Board") Rules and Regulations, petitioner Manhattan College Adjunct Faculty Union, New York State United Teachers, AFT/NEA/AFL-CIO files this statement in opposition to the Employer's request for review. Petitioner submits that the Board should reject the Employer's request for review, as the Employer has failed to establish grounds for review.

Section 102.67 indicates that a party seeking review must demonstrate "compelling reasons" for review. Here, the Employer argues that the Board's recent decision in *Pacific Lutheran University*, 361 NLRB No. 157 (2014), "should be abandoned in favor" of the test articulated in *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002). Employer's

Request for Review, at 1. Moreover, the Employer claims that “[r]eview is necessary because the Region’s decision departs from the Board’s decision in *Pacific Lutheran*...and is grounded in prejudicial and erroneous factual findings.” *Id.* Notwithstanding these assertions, the Employer has failed to meet the requisite burden for granting a request for review.

In *Pacific Lutheran*, the Board already considered whether to apply the *Great Falls* test to a college or university that claims to be a religious institution. The Board determined that the two-part test set forth in *Pacific Lutheran* constituted the appropriate jurisdictional standard and held that the new standard would apply to all pending cases, such as the instant matter. *See Pacific Lutheran*, 361 NLRB No. 157 at 11. Accordingly, the Board has already determined the proper standard to apply in case like this – i.e., the *Pacific Lutheran* standard. Thus, the Employer’s arguments concerning *Great Falls* do not provide grounds for review.

The Employer’s other claims are similarly without merit. In the Supplemental Decision, the Regional Director appropriately cites *Pacific Lutheran* in support of the decision to exercise jurisdiction. The Regional Director properly applied *Pacific Lutheran* and issued findings that are consistent with *Pacific Lutheran*.

Furthermore, the Regional Director’s Supplemental Decision was well-reasoned and founded in fact. The Employer’s request for review mischaracterizes the facts and ignores the extensive evidence presented over thirteen (13) days of hearing that supports the Board’s exercise of jurisdiction over Manhattan College. As the Supplemental Decision shows, the Regional Director carefully considered the evidence and concluded that the Board can properly assert jurisdiction over Manhattan College. Contrary to the Employer’s contentions, the evidence conclusively established that Manhattan College does not hold out the petitioned-for

faculty as performing a specific role in creating or maintaining a religious educational environment.

The Employer's objection to the Regional Director's Supplemental Decision is essentially a matter of discontent with the outcome. The Employer did not agree with the Regional Director's decision to assert jurisdiction in 2011 and likewise disagrees with the result in 2015, following the re-opening of the record at the Employer's request. But the Employer's mere dissatisfaction with the decision does not present grounds for granting a request for review.

Accordingly, as the Employer has failed to articulate compelling reasons for the Board to reconsider the Regional Director's rational decision, the Board should deny the request for review. There are no cognizable grounds for granting the request for review or allowing the Employer to continue to frustrate the petitioned-for employees' rights under the National Labor Relations Act.

Dated: New York, New York
September 16, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document is being served this day upon the following persons, by electronic mail, at the addresses below:

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Dated this 16th day of September, 2015.

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