

Union Organizing at Religious Colleges and Universities

Union organizing directed at religious college and university faculties has gained momentum since the National Labor Relations Board (“Board”) issued its decision in *Pacific Lutheran University (“PLU”)* in 2014. In *PLU*, the Board adopted a new, two-part standard for determining whether to assert jurisdiction over faculty at religiously-affiliated colleges and universities. Under the *PLU* standard, the Board will assert jurisdiction unless: 1) the college or university holds itself out as providing a religious educational environment; and 2) the college or university holds the petitioned-for faculty out as performing a specific role in creating or maintaining the university’s religious educational environment.

The first factor is fairly easy to meet. The college or university merely has to show that it is organized as a nonprofit and that it presents itself as a religious institution. Often, the petitioning union will stipulate to this factor of the test.

The second factor, however, has been the stumbling block for most colleges and universities and has resulted in the Board asserting jurisdiction under the *PLU* test in the vast majority of cases. For the second factor to exist, the college must demonstrate that it holds out the petitioned-for faculty as performing a specific role in “creating or maintaining the religious educational environment.” The Board considers evidence that includes job descriptions, employment contracts, faculty handbooks, statements to accrediting bodies, and statements to prospective and current faculty and students when deciding if the second factor exists.

While the Board says that it will not look behind these publically available documents to assess the college’s actual practice, the Board specifically held in *PLU* that generalized statements that faculty members are expected to support the goals or mission of the university are by themselves not sufficient to prove this factor. The problem in applying this part of the test to most religious colleges and universities is that it fails to take into account that one of the core tenets of most of these institutions is to promote diversity and critical thinking so as to allow students and faculty to come to a greater understanding of the world and its relationship with God. By its very nature, this tenet is believed to require a diverse faculty in order to provide instruction beyond simple discussions about a specific religion or belief.

In the recently reviewed case of *Carroll College* the NLRB Regional Director found that the College met its burden under both factors of the *PLU* test and declined to assert jurisdiction over the College. In concluding that the College met the second factor the Regional Director relied on *PLU*’s footnote 19 in which the Board noted that it “will decline jurisdiction so long as the university’s public representations make it clear that faculty members are subject to employment-related decisions that are based on religious considerations.” *Carroll College*’s faculty handbook enumerated four reasons for which the College could discharge faculty for serious cause, one of which was “continued serious disrespect or disregard for the Catholic character or mission” of the College. There was no credible evidence that the College had relied

on this language to take an adverse employment action against a faculty member. The Regional Director, however, found that even though the handbook did not specifically state “that teaching a doctrine at odds with the religious faith of the institution could lead to discharge, the language of the Handbook [was] broad enough to encompass termination for that reason.” Thus, the Regional Director declined to assert jurisdiction.

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