



Manhattan College
Riverdale
New York, 10471

President's Office

January 13, 2011

Dear Colleagues:

As you may have read, the New York Regional Office of the National Labor Relations Board has rejected Manhattan College's assertion that as a Catholic Lasallian College it is entitled to constitutional protection of its religious mission. The NLRB Regional Office, having conducted what amounts to an assessment of our Catholic identity, has determined that the government has the right to exercise jurisdiction over the College. We have argued that the College merits a constitutional exemption under the authority of a series of decisions in the federal courts barring entanglement by the government with religiously identified colleges. (The legal background has been outlined in my message to the community of November 9, 2010.)

At issue in the 26- page ruling by the NLRB Regional Office is the Board's claim that Manhattan College does not hold itself out to the public as a religious – Catholic – college because it supports academic freedom and diversity, while seeking to maintain a "Catholic fabric." In addition, the NLRB takes the position that the College's commitment to Lasallian educational principles, which the ruling describes as "purely secular," demonstrates that "in the College's public statements it is decidedly *not* holding itself out as a religious organization."

While the ruling is disappointing and deeply disturbing, it is not surprising. The NLRB has consistently failed to follow the instructions of federal courts as to the constitutional protections to which religiously-affiliated entities are entitled. It is important to understand, however, that the courts have consistently recognized the kind of self-definition of genuine religious identity that the College has presented in its arguments, and that they have upheld claims such as those we are making in barring the NLRB from asserting jurisdiction over religiously-affiliated colleges. In fact, recent court decisions have taken a strong stance against the kind of scrutiny of religious authenticity on which the NLRB decision is based, and have ruled that such scrutiny itself is an overstepping of the authority of the government in its relations with religious institutions. Significantly, the NLRB decision does not address these recent cases.

Manhattan College does not need NLRB approval of its Catholic identity. We are openly and unapologetically a Catholic institution of higher learning, with a vibrant educational climate inspired by our Catholic and Lasallian heritage. I have been heartened and encouraged over the past months, during which we have been undergoing this public scrutiny, by the many messages of support and encouragement I have received from faculty—including adjunct faculty—alumni, students, staff and colleagues. These messages have convinced me, despite the claims of the union's blast e-mails, that our position is understood and embraced by the great majority of the members of our community. They

also give me hope that we will continue, even amidst these distractions, to carry on the kind of robust and collegial conversation that we as a community need to have as we work together in our common mission. In addition, I have received many messages from colleagues in religiously affiliated institutions of higher education expressing strong support for our stance and encouragement for the stand we are taking against intrusive external assessment of our core identity.

There has never been any question that Manhattan College values its adjunct faculty and the contribution those faculty members make to the mission of the College. The central focus of all of our concern is our students and the quality of their broad educational experience. Our administrative team knows that it has a simple (yet endlessly challenging) task, day in and day out: to work to the best of its ability to help improve that experience. Adjunct faculty obviously play a key role in creating that experience; therefore, we need to do everything we can as an educational community to assure that we have highly qualified and well supported adjunct faculty. I believe that most members of our community understand that we are working in good faith, and I know from personal experience that many of our adjunct faculty value their relationship with the College, enjoy the opportunity to teach our outstanding students, and believe they are treated fairly. As we move forward with an ambitious strategic plan and with renewed enthusiasm for our mission, we of course need to make sure that the talents of all members of our community are included, and that the voices of all are heard.

What is most disappointing and disheartening in the union's arguments and in the NLRB's decision is the complete lack of appreciation for what it means to be a 21st-century Catholic college whose mission requires engagement with the broader culture of American society and higher education. The NLRB takes the position that "[w]hile the College may well be affiliated with the Church and take pride in its historical relationship with the Church, the College's public representations clearly demonstrate that it is not providing a 'religious educational environment.'" The NLRB further claims that Manhattan College's public statements acknowledging that it is not controlled by the Catholic Church and is an accredited institution of higher learning in New York State are the proof that "act as a check on institutions that falsely identify themselves as religious merely to obtain exemption from the NLRA [federal labor law]." In addition, New York State United Teachers argued in its submission at the conclusion of the NLRB hearing that "the College's claims of religious exemption from NLRB jurisdiction are less relevant than ever!" Such statements, which call our Catholic identity "irrelevant" at best, and in truth a cynical device to avoid unionization are, frankly, offensive. They are also unfortunately characteristic of the rhetoric of those who are pressing this action against the College.

Among the key "evidence" presented by the union and accepted by the NLRB as supporting the conclusion that the College is not sufficiently Catholic are the following: the President of the College is not a Christian Brother; there are only a few Christian Brothers on the faculty or in the administration; belief in Christ or God is not a requirement for employment as a faculty member or enrollment as a student; and religious studies courses are academic and intellectual in nature, not catechetical.

Even more egregiously, the union and the NLRB argue that the efforts over the past decade by Manhattan College, in concert with much of Catholic higher education, to refine and

revitalize its Catholic mission for the 21st century, are a cynical attempt to avoid the reach of the NLRB. The union stated in its brief that the College had taken steps “to ‘Catholic-proof itself’ or seemingly paint its Catholic character in such a way as to try and build a case for exemption.” The union cited as proof that Manhattan is not truly a Catholic College, the declaration by Manhattan that “the College has no intention of tying its Catholic identity to the policies and practices of the pre-Vatican II era”:

There is no intention on the part of the Board [of Trustees], 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. (From the Board Report: “Manhattan College: Catholic, Lasallian, and Independent, in *Manhattan College: An Introduction to the Catholic Culture and to our Lasallian Heritage*, p. 14)

The arguments based on the presence or absence of Brothers in various positions, or on the lack of confessional tests at hiring, betray complete ignorance of more than thirty years of hard and faithful work in Catholic higher education, undertaken in the spirit of the Second Vatican Council. This work aims to pass on the tradition to Catholic laypersons and to all men and women of good faith who choose to accept employment at a Catholic university. Similarly, arguments made about our curriculum show no understanding of the nature of Catholic higher education and its bedrock commitment to the intersection of faith and reason. Both the union and the government apparently perceive our intellectual openness and welcoming spiritual environment, which we consider to be strengths of the Catholic intellectual tradition, as weaknesses. The ruling suggests that the Regional NLRB believes that the primary hallmarks of an authentic Catholic college or university are exclusionary hiring, a proselytizing atmosphere, and dogmatic inflexibility in the curriculum. They thus find themselves arguing, bizarrely, that our faithful attempt to follow the spirit of the Second Vatican Council, reading the signs of the times and adapting our Catholic mission to contemporary needs, proves that we are not a Catholic college. Such arguments and conclusions would be uninformed and disrespectful of contemporary Catholicism in any context; in this case, they amount to an attempt to deprive the College of a fundamental constitutional right to define its own religious identity, and not have the definition of “Catholic” imposed by the government.

The reassessment of mission that engaged the College in the 1990s through the last decade was one that occurred on the campus of virtually every Catholic college and university in the country during those years. The process at Manhattan involved considerable thought, prayer, reflection, and wide consultation, and issued in documents and policy formulations that carefully define our Catholic mission tradition as complex, living, and evolving. They also place stewardship firmly in the hands of the entire community, religious and lay, Catholics and members of other traditions who are welcomed in good faith into the work. Calling ourselves “Lasallian” is not, as the government’s decision implies, a watering down of our Catholic identity: it is a strengthening of it. The particular charism of the Brothers of the Christian Schools is a Catholic charism; the openness of the charism to the thinking and insights of all who seek truth in good faith, whatever their personal religious professions, is also Catholic.

The life's work of many Catholic educators has been poured into this project. Our own Brother Luke Salm's tireless historical and theological work on the life and charism of St. John Baptist de la Salle was undertaken so that Lasallian institutions could effectively transmit the rich legacy of the Institute of the Brothers of the Christian Schools to a new generation of educators, men and women who would be welcomed into what had been "Brothers' schools," and entrusted with conducting them faithfully and well. Neither the government nor the union is competent to define what "Lasallian" means or to parse its relationship to "Catholic." And neither the government nor the union has the constitutional right to decide whether or not Manhattan is to be measured by their definition of "Catholic" rather than according to the standards formulated by the College itself, in collaboration with the Institute, the broader Catholic community, and in faithful dialogue with the Church.

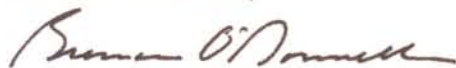
Every time the government's and union's same faulty analysis and argument has been tested in the federal courts, the religious college has prevailed and the courts have stated that the government cannot assume jurisdiction. The union knows this. The NLRB knows this. However, they frame their arguments as if the federal court decisions involving religious colleges, from 1985 to 2009, do not exist. In fact, the union's cursory treatment of these complex factual and legal issues in a 7-page brief to the NLRB does not even refer to the cases that validate the rights of religious colleges. The NLRB's decision, similarly, fails to cite the 2009 federal court case which is a major decision upholding the rights of religious colleges.

Nevertheless, the Regional Director of the NLRB, in addition to having denied Manhattan College's request to be exempt from jurisdiction, has directed that an election be conducted among the adjunct faculty, with the details to be decided. Such activity unfortunately will divert time, attention, and personnel from the College's pressing tasks, including accreditation review and strategic planning. It will also divert attention from the many forward-looking initiatives that we have launched in the past eighteen months, all of which are grounded in our mission as Catholic and Lasallian, and each of which necessarily involves cultivation of a genuine community of educators, rich in its diversity, and united in the Lasallian spirit of service to students—a spirit grounded in our Catholic identity. We will do what we need to do, and I am confident that the momentum we have started will continue. We have important work to do, work that has been entrusted to us by generations of faithful men and women who have understood that Catholic university education is an intellectual, not a catechetical, project. I have faith that we are up to the challenge.

We are in the process of assessing options and shall make a determination soon about how the College shall proceed with regard to an appeal. I will keep you informed.

With gratitude for your patience and for your support, and wishing you a blessed 2011.

Yours in "the Work,"



Brennan O'Donnell, Ph.D.
President