

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

**MANHATTAN COLLEGE,**

**EMPLOYER**

**AND**

**MANHATTAN COLLEGE  
ADJUNCT FACULTY UNION,  
NYSUT, AFT, NEA, AFL-CIO**

**CASE No. 2-RC-23543**

---

**POST-HEARING MEMORANDUM OF THE  
MANHATTAN COLLEGE ADJUNCT FACULTY UNION**

---

**NEW YORK STATE UNITED TEACHERS**

**Daniel Esakoff, Organizer  
55 Christopher Street, 2<sup>nd</sup> Floor  
New York, NY 10014**

## INTRODUCTION

The Manhattan College Adjunct Faculty Union (hereinafter, Union or Petitioner) submits this Post-Hearing Memorandum in response to objections to its RC Petition raised by Manhattan College (hereinafter, College or Employer). The Memorandum opens with a brief Statement of the Case which describes the procedural history of this matter then proceeds with an Argument and a Conclusion. The Argument section addresses factual issues related to the jurisdictional (*NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979)) challenge raised by the Employer and the application of the relevant law to the facts established in the Record.

As is more fully discussed below, the Board's assertion of jurisdiction over the Employer would not infringe on the free exercise of religion guaranteed by the First Amendment because the College is not controlled by a Church or other religious entity, does not have a "religious mission" within the meaning of *Catholic Bishop*, and does not require its faculty to propagate or conform to the teachings of a particular religious faith. Accordingly, the Board is not prevented from asserting jurisdiction over this Employer under *Catholic Bishop* and therefore, the Board should direct a representation election within the bargaining unit as defined in the Stipulated Election Agreement between the Union and the Employer.

## STATEMENT OF THE CASE

On October 5, 2010, the Union filed an RC Petition seeking certification as the bargaining agent for all adjunct faculty employed by Manhattan College. At the prehearing conference on October 13, 2010, the Employer advised the Board and the Union that it objects to the Board's assertion of jurisdiction over Manhattan College

based on *Catholic Bishop*. The Hearing opened on October 27, 2010, at which time Hearing Officer Robert Guerra reminded the parties that the Board asserted jurisdiction over Manhattan College in November 1999 and the current Hearing would be limited to factual matters that have occurred since then that might change the Board's decision.

Guerra TR 9. The Board's Supplemental Decision and Direction of Election of November 1999 was entered into the Record. B 3. The Hearing concluded on November 19, 2010 after eight days on the Record.

### ARGUMENT

Under *Catholic Bishop* and its progeny, it must be determined if a Church or other religious entity is so involved with the day-to-day operation of the College that the Board's assertion of jurisdiction would pose a significant risk of infringement on the free exercise of religion guaranteed by the First Amendment. The focus of that inquiry is on the extent to which the College has a religious mission and whether or not the faculty is required to propagate or conform to a particular religious faith. Applying that analysis to Manhattan College in 1999, the NLRB asserted jurisdiction. No factual matters have occurred since then that would change the Board's decision. If anything, the College's claims of religious exemptions from NLRB jurisdiction are less relevant than ever!

#### A. Undisputed Facts

1. The College continues to be owned by the Board of Trustees, not by the Catholic Church, the Archdiocese of New York, or the Order of the Christian Brothers. ER 6, p 1, p 3
2. Control of the College continues to be vested in the Board of Trustees, as it was in 1999. ER 6, p 3
3. The President of the College is not a member of the Order of the Christian Brothers. Membership in the Order is not a requirement of the job. In 1999 when the Board asserted jurisdiction, the President was a member of the Order. Though membership in the Order is not a requirement for assuming the presidency of the College, the Board asserted jurisdiction in 1999 when

- Brother Thomas Scanlan was President. The current president, Dr. Brennan O'Donnell, is not a Christian Brother. ER 6, p5; ER 16, p43; Fabe TR 71
4. The Provincial of the Order is a member of the Board of Trustees, and his vote holds no more weight than the vote of any other member of the Board of Trustees. Fabe TR 167-168
  5. Thirty-two of the thirty-seven members of the Board of Trustees are lay persons, and only five are members of the Order. ER 8
  6. Five of the approximately 185-190 faculty members are members of the Order of the Christian Brothers, a very small percentage and a seventy-five (75%) decrease in numbers since 1999, when twenty members of the Order were employed as members of the faculty. Fabe TR 149
  7. For the fiscal year 2008, the College's total net revenue was \$81,087,903 including government grants of \$399,473. For the fiscal year 2009, the College's net revenue was \$85,128,565 including government grants of \$343,031. For the fiscal year 2010, the College's net revenue was \$86,731,000 including government grants of \$394,000. U 7
  8. Belief in Christ or God continues not be a requirement for employment as a faculty member or for membership on the Board of Trustees or for enrollment as a student. ER 9, p4; ER 16, p14; Merriman TR 347
  9. Manhattan College continues not to have a mission to proselytize on behalf of the Catholic Church. ER 9, p 14
  10. All of the College's required nine credits in Religious Studies, including the three credits in Catholic Studies, approach the subject matter in an academic and intellectual manner. U 2, p 278

**B. College's Own Publications Support NLRB Jurisdiction.**

There have been no substantive changes at Manhattan College that might lead the Board to withdraw its jurisdiction. However, since the Board's 1999 assertion of jurisdiction, the College has published documents to "Catholic-proof itself" or seemingly paint its Catholic character in such a way as to try and build a case for exemption from the Board's jurisdiction. But close inspection of the documents (ER – 9, *Sponsorship Covenant*, and ER – 16, *Manhattan College – An Introduction to the Catholic Culture and to our Lasallian Heritage*) demonstrate, in fact, that Manhattan College still does not meet the tests as articulated in *Catholic Bishop*.

There is no dispute that the College has a Catholic identity, a Catholic culture. There is no dispute that the College is independent. And, in fact, the College

inadvertently makes the case for the Board asserting jurisdiction when, in its *Sponsorship Covenant* and *Introduction to the Catholic Culture*, the above-referenced documents, it specifies how it is different from the schools which were found to be exempt from Board jurisdiction under *Catholic Bishop*:

...it is not owned and operated either by the government, such as a state university, or by the Church, such as a diocesan or papal university... There is a real sense in which the College is dependent on the State of New York for its charter to operate and grant degrees, and for the conditions that make it eligible for state aid, on the federal government both various funded programs and the norms for meriting the funds; on various accrediting agencies to guarantee the overall quality of the institution and its academic programs. ER 16, p15

The College continues:

As an institution of higher learning, however, the mission of the College is strikingly different from that of the parochial schools and Catholic high schools where indoctrination in the faith and insistence on religious observance is seen as part of their mission. ER 16, p15

Finally, in its inadvertent case for continued Board jurisdiction, the College states:

...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, 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. ER 16, p14

### **C. College's Mission Statement Supports Board Jurisdiction**

The Mission of the College reads, in part:

...the College is founded upon the Lasallian tradition of excellence in teaching, respect for individual dignity, and commitment to social justice inspired by the innovator of modern pedagogy, John Baptist de La Salle.

The mission of Manhattan College is to provide a contemporary, person-centered educational experience characterized by high academic standards, reflection on faith, values, and ethics, and life-long career preparation. This is achieved in two ways: by offering students programs which integrate a broad liberal education with concentration in specific disciplines in the arts and sciences or with

professional preparation in business, education, and engineering; and by nurturing a caring, pluralistic campus community. ER 16, cover

The Mission Statement does not state anything about propagating the faith, proselytizing, or religious practice as a requirement of either students or faculty.

Furthermore, the *Sponsorship Covenant* references a direct relationship between the Mission Statement and the hiring of faculty. It states that the Mission Statement is discussed with each interviewed applicant at the College. Even were this so, discussion of the Mission Statement does not make Manhattan College a religious school. However, it isn't so. The testimony of a number of witnesses clearly refutes the Employer's claim that the Mission Statement is discussed with each interviewed applicant at the College. ER 9, p 3, #2, Hiring Practice; Korall, TR 372; Fahey, TR 459; Schutz, TR 648-649; Ewing TR 684

Finally, the Mission Statement speaks of social justice inspired by John the Baptist de La Salle. While the Employer argued that social justice is a unique attribute of Catholic colleges, witnesses testifying on behalf of the Employer and the Union agreed that social justice, particularly community service, is not at all unique to Manhattan College or Catholic colleges in general. Merriman, TR 321; Schutz TR 651-652

### **CONCLUSION**

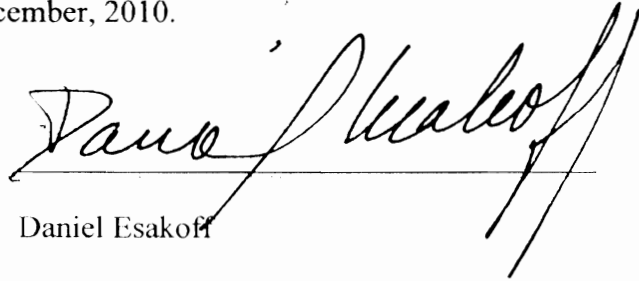
There is no reason the Board should withdraw its jurisdiction over Manhattan College. Manhattan College is not "church operated" (*Catholic Bishop*) where "the suffusion of religion into the curriculum and the mandate of the faculty to infuse the students with the religious values of a religious creed...create the conflict with the Religion clauses..." *NLRB v Bishop Ford Central Catholic High School*, 623 F.2<sup>nd</sup> at 823. Furthermore, Manhattan College is not dedicated to "propagating a religious faith"

and it is not operated and organizationally controlled by a religious organization. *Jewish Day School of Greater Washington, Inc.*, 283 NLRB 757, 761 (1987). At Manhattan College, there is no requirement that faculty members “conform to [Church] doctrine or promote the ideals and objectives of the...Church.” *Livingstone College*, 286 NLRB 1308 (1987).

The Petitioner respectfully requests that the Board direct a representation election in the bargaining unit as defined in the stipulated agreement between the Union and the Employer.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Post-Hearing Memorandum was mailed, first-class postage, to Shelley Sanders Kehl, Esq., counsel for the Employer at: Kehl, Katzive & Simon, LLP, 317 Madison Avenue, 21<sup>st</sup> Floor, New York, NY 10017-5208, this 10<sup>th</sup> day of December, 2010.



Daniel Esakoff