



Office of the President

June 27, 2017

To the Manhattan College community,

I write with an update on the long process through which the National Labor Relations Board has continued to assert its jurisdiction over the College. (A full record of this process to date is available at <https://inside.manhattan.edu/offices/human-resources/adjunct-unionization-effort.php>)

The most recent development has been the certification by the Board of the election of 2011, in which 59 adjunct faculty who were at that time employed by the College were counted as voting for, and 46 against, representation by the New York State United Teachers. Because the NLRB continues to take the position that it has jurisdiction over the College, it asserts that these votes give the federal government the right to insert itself into how the College will define and pursue its mission in the future.

The College remains steadfast in its argument that this action is in direct conflict with the 1979 ruling of the U.S. Supreme Court and a number of federal Appeals Court rulings thereafter that establish the right of faith-based colleges to be exempt from NLRB jurisdiction. That ruling, made on first amendment grounds, protects the fundamental right of religiously affiliated institutions to determine, without government interference, how they will fulfill their religious mission.

During the past seven years, the College and the NLRB have been engaged in a disagreement on the crucial issue of who defines what it means for Manhattan College to be a Catholic college. The College has consistently taken the position that such definition is entirely the College's right and responsibility, to be determined without the entanglement of the federal government. The NLRB has repeatedly ignored the constitutional standards established by the courts that prohibit the government from deciding which activities are and are not expressions of Manhattan College's religious identity. In its first ruling against the College, the NLRB undertook an intrusive investigation of what it identified as defining characteristics — including such things as Mass attendance, the number and location of religious imagery, and whether or not there was a religious test for hiring — in deciding that the College was not sufficiently Catholic to merit exemption from government control. The College argued strongly that such an investigation and such a ruling were themselves instances of the NLRB overstepping its bounds.

As disturbing as that first ruling was, more recent rulings have gone even farther in demonstrating the deep problems that stem from allowing the Board to define religious identity. Modifying its original test for religious affiliation in deciding a similar case involving Pacific Lutheran University, the Board determined that in that case (and in subsequent rulings that applied the Pacific Lutheran decision to Seattle University and Duquesne University) faculty who teach theology or religious studies must be excluded from the bargaining unit.

In applying "Pacific Lutheran" to Manhattan College, the Board unilaterally excluded faculty in religious studies, effectively deciding for us (and, by extension, for all Catholic universities) that such faculty have a specific responsibility for the Catholic mission, which is not shared with other faculty.

This view stands in direct opposition to Manhattan College's position. The College never argued that faculty from religious studies should be treated differently from other faculty, and there was no testimony making that argument at any time in the proceedings. Manhattan College has always taken the position that all faculty share the role of supporting and sustaining the Catholic mission. This unilateral — and flawed — decision of the NLRB, in imposing the government's definition of Catholic mission on the College, stands as a stark example of the precise danger that the Supreme Court and federal courts sought to prevent. Indeed, in this most recent decision, even the Chairman of the NLRB dissented from the decision of the other two Board

members, making exactly the point that its ruling in Pacific Lutheran (and in our case) was a clear instance of exactly what the courts have long sought to preclude.

This case is not about Manhattan College's support for the rights of employees or the important role unions play in our society. It is not about the very important work of our adjuncts and the College's commitment to them. It is about the current and future freedom of Catholic and other religiously affiliated colleges and universities to pursue their mission without undue government influence.

As the NLRB continues to seek to impose its jurisdiction on the College, the College is evaluating its options in accordance with the law and NLRB procedures, understanding that it eventually may have to pursue court review for its constitutional rights to be upheld, as other colleges have done successfully in the past and are doing at this time. Had the NLRB ruled at the outset in accordance with the Supreme Court decision and the clear interpretation by the federal courts, the case would have been resolved years ago. Unfortunately, the NLRB is determined not to do so. Therefore, in order to be permitted to have court review, under NLRB procedures the College first would have to refuse to bargain with the union, which likely would result in the union seeking a ruling by the NLRB that the College has committed an unfair labor practice. These charges would have to be resolved by the NLRB before Manhattan College could proceed to a court review.

The very essence of the Supreme Court's understanding of the constitutional right of faith-based schools to define their mission was the Court's understanding that these are individual and unique decisions to be made by the institution and not the government. Each institution has the right to define its own identity. There is no one single definition of Catholic or Lasallian or Lutheran or any other religious community in this nation. And the Supreme Court understood that the only consistent position was that the determination and the definition was not the place for government entanglement.

The Catholic mission of Manhattan, along with many other Catholic colleges and universities in the United States, has grown and evolved greatly in the past several decades, as the Catholic university has assisted the Church in "reading the signs of the times," responding enthusiastically to the promise, as well as the challenges, of the modern world. As a result, our Catholic identity is a rich and complex thing, encompassing the work of scholars and teachers across the entire range of disciplines and approaches to knowledge. No one discipline "owns" the Catholic mission of the Catholic university, and our culture of inquiry, in which faith and reason are held in complementary relationship, admits of — and even requires — the participation of everyone who strives for truth. In asserting that it is only some faculty in some disciplines who embody the religious identity of Manhattan College, the NLRB betrays a serious lack of understanding of an institution it seeks to regulate.

Sincerely,

Brennan O'Donnell
President

Brennan O'Donnell, Ph.D.
President

