



OFFICE OF THE PRESIDENT

September 11, 2015

To the Manhattan College community,

I am writing to update you on the most recent actions by the National Labor Relations Board (NLRB) and the College with regard to our longstanding case before the Board.

You may remember that last February the NLRB in Washington, D.C. remanded our case back to the Regional Office in New York City, where it originated, for appropriate action consistent with the NLRB's December 2014 decision in a similar case brought forward by Pacific Lutheran University. On August 26, the Regional Director issued a supplemental decision based on the new standards applied in that case. That ruling asserted the right of the Board to exercise jurisdiction over the College.

On Wednesday, September 9, the College took the next step in the process and filed a request with the Board in Washington for review of this most recent decision. We do so because we continue to assert, along with several other colleges currently undergoing similar scrutiny by the Board, that under the Constitution, as interpreted by the Supreme Court, the NLRB lacks jurisdiction over us as a religiously affiliated institution.

I have summarized the history of this constitutional challenge, stemming from a 1979 Supreme Court decision, in several letters to the community (available along with the full record of the case at <http://manhattan.edu/about/human-resources/adjunct-unionization-effort>). The issue has come before the courts several times since 1979, and each time the courts have found the risk of government entanglement in decisions about religious mission a compelling reason to rule in favor of religiously affiliated colleges and against the NLRB. In these cases, the courts have laid out a straightforward test of a college's right of exemption from jurisdiction: 1. It is recognized by a religious organization; 2. It is non-profit; 3. It holds itself out publicly as providing a religious educational environment.

The NLRB has steadfastly rejected this court-devised test and, for years, applied its own test of whether religiously affiliated colleges meet its "substantial religious character" test. When Manhattan College and other similarly situated faith-based colleges challenged the NLRB in the past few years, it was because we believed that the "substantial religious character" test was the precise intrusive entanglement prohibited by the religious-freedom clauses of the Constitution.

When Manhattan College raised the constitutional concerns in 2010, the Regional Director of the Board determined at that time that Manhattan College was not sufficiently Catholic under the NLRB's analysis to be exempt from jurisdiction. In 2011 we challenged that decision to the NLRB in Washington. Although it took almost four years, ultimately the NLRB agreed, in deciding the Pacific Lutheran case, that its "substantial religious character" test was improper, and did so for the very reasons Manhattan College and other colleges had put forward in challenging it. Instead of adopting the test devised and consistently applied by the courts, however, the Board at this point decided, in a divided opinion, to develop another set of criteria for determining whether a religiously affiliated college was sufficiently religious. Specifically, the NLRB stated that to be exempt from jurisdiction, a religiously affiliated college has to establish first that it holds itself out

as providing a religious educational environment, and, if that test is satisfied, that the employees who seek to be unionized are held out by the College as having a specific role in maintaining the religious educational environment.

Although the first part of the test dealing with providing a religious educational environment is consistent with the court-devised test, and is based on a review of public documents and statements, the second part of the test, dealing with the specific role of the employees seeking to unionize, suffers from the same constitutional infirmity as the earlier abandoned test. It does so because it involves the government once again in an intrusive inquiry into religious activity, and places the government in the position of judging what kind of activity does and does not support the religious mission of a religiously affiliated college.

What is particularly important to note is that the challenge initially raised by Manhattan College and other similar colleges not only resulted in the NLRB having to abandon its earlier unconstitutional test, but also sharply divided opinion on the Board itself. The Pacific Lutheran decision, a split decision, included a strong and lengthy dissenting opinion that reflected substantially the position of the religiously affiliated colleges.

Moreover, in the August 26 decision in our case, the Regional Director accurately ruled that Manhattan College does provide a religious educational environment, is recognized by the Catholic Church, and is a nonprofit, thereby meeting all of the criteria set forth by the federal courts to be exempt from jurisdiction. In addition, the ruling concedes that the College “introduced [in hearings] an overwhelming amount of evidence of . . . how its full time members are expected to maintain the College’s religious environment.” Nevertheless, the Regional Director, unsupported by the evidence provided at the hearing, made a determination that adjunct faculty do not share responsibility for the mission of the institution with full time faculty. The many problems with this sort of determination are obvious: adjunct faculty teach the same courses and the same students as do full time members; all strive to guide students in the same set of “core competencies”; and everyone shares responsibility for sustaining and supporting the values of the institution as set forth in our Mission Statement and in the many expressions of our Catholic and Lasallian identity that pervade our institutional culture. In addition, the Regional Director’s misplaced assumptions that the College’s support for academic freedom, diversity and respect for individual beliefs is inconsistent with having a Catholic religious mission is so inaccurate that it must be challenged.

Once again, as at each step in this long and intrusive process of inquiry, I want to assert that the issue motivating our actions is not the issue of union representation itself. At issue is the question of whether the College has the right to pursue its Catholic mission and define responsibilities for that mission without government entanglement.

I urge members of the community to visit the website mentioned above, which contains the full record of the case, including the several decisions and briefs filed by the union and by the College.

With thanks for your attention and best wishes for the new academic year.

Sincerely,

Brennan O’Donnell

Brennan O’Donnell, Ph.D.
President