

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

In the Matter of

MANHATTAN COLLEGE,

Employer,

- and -

Case No. 2-RC-23543

MANHATTAN COLLEGE ADJUNCT FACULTY
UNION, NEW YORK STATE UNITED TEACHERS,
AFT/NEA/AFL-CIO,

Petitioner.

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

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In January 2011, the Regional Director asserted jurisdiction over Manhattan College (the “College”) following an extensive hearing. While the parties awaited a decision from the National Labor Relations Board (“Board”) concerning the Employer’s request for review of the Regional Director’s decision, the Board issued its decision in *Pacific Lutheran University*, 361 NLRB No. 157 (2014), setting forth jurisdictional standards applicable to this matter. Thereafter, the Region reopened the record in this case.

Now, after reopening the record and receiving additional evidence, the record confirms that the Region should re-assert jurisdiction over the College under the *Pacific Lutheran* standards. While the record contains evidence that the College does not hold itself out as providing a religious educational environment, even if the Regional Director finds that the College has met the threshold requirement under *Pacific Lutheran*, the College still has not

shown that it holds out the petitioned-for faculty members as performing a specific role in creating or maintaining a religious educational environment.

ARGUMENT

POINT I

EVIDENCE SHOWS THAT MANHATTAN COLLEGE DOES NOT HOLD ITSELF OUT AS PROVIDING A RELIGIOUS EDUCATIONAL ENVIRONMENT

For the threshold issue under *Pacific Lutheran*, “[a]ppropriate evidence of how the university holds itself out as providing a religious educational environment...include[s], but by no means [is] limited to, handbooks, mission statements, corporate documents, course catalogs, and documents published on a school’s website,” as well as press releases. *Pacific Lutheran*, 361 NLRB No. 157 at 6. The record here contains this type of evidence, showing that the threshold requirement has not been met because the College does not hold itself out as providing a religious educational environment.

Non-Religious Educational Environment

In actuality, the College holds itself out as providing a non-religious educational environment. This manner in which the College holds itself out has remained unchanged since at least 1968. *See* Petitioner Ex. 1.

In an August 19, 1968 letter to the New York commissioner of education, the College’s then-president explained that in 1948 a prior president had “submitted to the [New York] State Education Department a ‘Certificate of Religious or Denominational Institution Under Section 313 of The Education Law.’” *Id.* New York Education Law § 313(4) allows “[a]n educational institution...[to] certify in writing to the commissioner [of education]...that it elects to be considered a religious or denominational educational institution... .” The president, however, declared as follows in the 1968 letter:

After due consultation with trustees and administrators of Manhattan College, it is my wish that this Certificate be withdrawn and rescinded, since it has no appropriateness to our present circumstances – nor do I really see the appropriateness even in 1948... Since we have never practiced discrimination as to race, religion, creed, color or national origin in accepting applicants for admission, I am at a loss to understand why the College was anxious to claim sectarian or denominational status at that time.

Whatever reasons may seem to have existed in 1948, it is clear that declaration of such [sectarian] status at the present time is neither desirable nor in keeping with the facts... .

Petitioner Ex. 1. The circumstances described by the College's president in the 1968 letter equally apply today, thereby demonstrating that Manhattan College is not a sectarian institution and does not hold itself out as providing a religious educational environment.

The evidence shows that the College refers to itself in non-religious terms. For one, the current by-laws of the College's Board of Trustees state that "[t]he purpose of the corporation shall be the promotion of education." Employer Ex. 6, at 1. Moreover, on the College's website below "The Mission of Manhattan College," the College declares that its "Strategic Vision" is for "Manhattan College in 2025 [to] be widely recognized as among the best institutions of its kind." Employer Ex. 62 (emphasis added). In a footnote on the same web page, the College then explains that "[o]f its kind" means "private 'masters-level institutions'; that is schools that are predominantly undergraduate, with some masters programs; these schools are also known as 'comprehensive universities.'" *Id.* Employer Exhibit 62 thus shows that when Manhattan College uses the phrase "the best institutions of its kind" on another web page concerning the "Strategic Plan," the College is again holding itself out as a private masters-level institution. *See* Employer Ex. 61, at 1; Employer Ex. 62.

While Employer Exhibit 62 refers to Lasallian heritage and Manhattan College as a Catholic institution, the first sentence provides that the College “embraces qualified men and women of all faiths, cultures, and traditions.” Employer Ex. 62. Further, the College states that the institution’s actual mission is as follows:

...The mission of Manhattan College is to provide a contemporary, person-centered educational experience that prepares graduates for lives of personal development, professional success, civic engagement and service to their fellow human beings. The College pursues this mission through programs that integrate a broad liberal education with concentration in specific disciplines in the arts and sciences or with professional preparation in business, education and engineering.

Id. Interestingly, compared to the mission statement that existed as of 2010, the current mission statement no longer contains a mention of “reflection on faith” in this section. *See* Employer Ex.

14. Accordingly, this information reflects an educational mission unrelated to religion.

Furthermore, the May 2015 campus announcements suggest that the College’s use of the term “Lasallian” does not denote a religious educational environment. In the announcements, the College “clearly and unambiguously” indicates that:

“...calling oneself Lasallian is not relegated only to those of the Christian faith. Many faith-filled people professing other creeds participate daily in the Lasallian educational Mission. They are a valued part of this community.”

Employer Ex. 75. That exhibit also contains a comment about a “hope that students of all religions would graduate from our Lasallian schools professing their beliefs more faithfully and be committed to the construction of a better world.” Employer Ex. 75, at 2 (emphasis added). This reference to students “professing their beliefs” – and not specifically Lasallian or Catholic beliefs – signifies that the College is not promoting a religious educational environment.

Press Releases

Manhattan College has also posted press releases on its website that have no mention of the College providing a religious educational environment. An example of this is a July 2, 2013 press release, which details forty-six (46) “private institutions” across the country that offer a million dollar return on investment (ROI) to graduates.” Petitioner Ex. 28 (emphasis added). In discussing the “private institutions,” the July 2 press release lists such institutions as the California Institute of Technology, Massachusetts Institute of Technology, and Stanford University, as well as Manhattan College – which is not referred to as a religious institution in the press release. *Id.*

A July 29, 2014 press release on the College’s website concerns *Money* magazine’s ranking of Manhattan College, based on an evaluation of “educational quality, affordability and career outcomes... .” Petitioner Ex. 27. Provost William Clyde (“Provost Clyde”) is quoted in the press release as saying that “[t]he methodology places high value on the graduation rate, earnings and other measures of success, given graduates’ backgrounds and majors, providing further evidence that Manhattan alumni add value wherever they go.” *Id.* In that press release, Provost Clyde made no mention or acknowledgment of the College having a religious educational environment.

In an April 29, 2015 press release, the College touted “how well Manhattan College prepares students for successful careers.” Petitioner Ex. 26. The press release again refers to Manhattan College as a “private college[]” and “private...institution[],” and discusses its “added value as a liberal arts college.” *Id.* Citing data and analysis from the Brookings Metropolitan Policy Program, the press release states that the College’s value comes from “unmeasured characteristics [that] amount to an ‘x factor’...like administration or teaching

quality, student ambition, or alumni networks.” *Id.* Again, there is no reference to providing a religious educational environment.

In another press release dated August 23, 2010, which was still available on the College’s website in June 2015, the College states that it “prides itself on being one of the best institutions in the country... .” Petitioner Ex. 25. This press release highlights the College’s ranking as “the No. 17 regional university in the North” in U.S. News & World Report’s annual survey. *Id.* Per the press release, President Brennan O’Donnell (“President O’Donnell”) stated that the U.S. News ranking “recognizes our commitment to academic excellence across all five of our schools.” *Id.* President O’Donnell further detailed how the College is “committed to providing an excellent educational experience for students from widely various backgrounds... .” *Id.* While President O’Donnell referenced “our mission,” he did not describe it as a Lasallian, Catholic, or religious mission. *See id.*

An August 31, 2009 press release, which was still accessible to the public in June 2015, discusses the ABET reaccreditation of the College’s engineering programs. Petitioner Ex. 24. Dr. Tim Ward (“Ward”), dean of the School of Engineering, averred that “[i]t is through the hard work of the engineering faculty, staff and students that we have been able to demonstrate the quality of our programs.” *Id.* This press release does not contain any statement from Ward indicating that a religious educational environment played a part in the ABET reaccreditation. Rather, the press release explains that the accreditation “is based on numerous factors, including faculty quality, facilities, and success of students in achieving stated program outcomes.” *Id.* Consistent with the August 31, 2009 press release, ABET accreditation information for the College’s engineering programs makes no mention of the College being a Lasallian or Catholic institution or having a religious educational environment. Petitioner Ex. 23.

Self-Studies for Accreditation

The ABET Self-Study Report for the College's mechanical engineering program further illustrates that the College's School of Engineering does not provide a religious educational environment. This self-study indicates that the program outcomes for the mechanical engineering program do not concern or relate to a religious educational environment. *See* Petitioner Ex. 32, at 41-42. While the College offered Employer Exhibit 100 regarding the "Mapping of College Wide Core Competencies to ABET Student Outcomes (a) through (k)" for the mechanical engineering program, that document is irrelevant as the evidence showed that it was not provided to ABET nor made publicly available. *See* Employer Ex. 100; Petitioner Ex. 32, at 41-42.

In the ABET mechanical engineering self-study, right after mentioning the College's mission statement, the College avers that "[t]he mission of the Manhattan College School of Engineering is to prepare students for a productive and rewarding career in engineering or a related profession." Petitioner Ex. 32, at 25 (emphasis in original). This statement is published on the College's website. *See id.* The College also specifies in that self-study that "[t]he educational objectives of the school of engineering as stated in its website" are:

1. Leadership, achievement, and involvement in engineering and related professions;
2. Dedication to furthering the engineering profession through continuous self-improvement;
3. Ethical practices and moral character;
4. Commitment to engineering as a service-to-humanity profession

Id. at 26. The 2014-2015 Undergraduate Catalog lists the same educational objectives. *See* Petitioner Ex. 15, at 290.

Not only do the above statements contained in the ABET mechanical engineering self-study portray a non-religious educational environment, these statements elucidate an inaccuracy in the ABET Self-Study Report for the College's civil engineering program. At one point, the ABET civil engineering self-study refers to six (6) "summarized" educational objectives for the School of Engineering. *See* Employer Ex. 129, at 23. As the ABET mechanical engineering self-study shows, this comment in the civil engineering report is an inaccurate representation and does not reflect what is communicated to the public. Nonetheless, the College ultimately confirms in the ABET civil engineering self-study that the "current Education Objectives for Civil Engineering" are the same four (4) objectives found on the College's website and in the 2014-2015 Undergraduate Catalog. *See* Employer Ex. 129, at 23-24.

Course Catalog

The College's course catalog, titled the 2014-2015 Undergraduate Catalog, also reflects a non-religious educational environment, as demonstrated by information regarding the engineering department and other academic programs.

The course catalog contains the following statement about the engineering faculty and curriculum:

...[E]ngineering faculty, in consultation with the Manhattan College Engineering board of advisors, a distinguished group of engineers and industrial leaders assembled from engineering-related organizations, study and evaluate the concepts of engineering education and the school's programs. These studies re-emphasize the importance of humanities, mathematics and sciences as the foundation of engineering education. The

engineering curriculum is, therefore, planned to provide the sound and broad education required in important branches of engineering.

Petitioner Ex. 15, at 292. Further, the course catalog and the College's website provide that "[t]he mission of the Mechanical Engineering program is to provide students with an education that will prepare them for future challenges in mechanical engineering, whether they plan to practice engineering or pursue advanced/graduate studies." *See* Petitioner Ex. 15, at 331; Petitioner Ex. 32, at 25. These statements exemplify how the College holds itself out as providing an educational environment unrelated to religion.

In the course catalog, there is evidence pertaining to the holding out of the College's biology department. On top of the testimony of Lance Evans ("Evans") regarding the biology department discussed in Point II, the 2014-2015 Undergraduate Catalog describes the biology department's educational objectives as follows:

...[T]he mission of the Department of Biology is to give our students an appreciation of the methods, potentials, achievements, and limitations of the biological sciences, and to instill in them the intellectual and ethical skills to use this information effectively... The faculty members of the joined Department of Biology recognize their responsibility to teach the values that are important to the process of free inquiry, the foundation of the discipline. The department fosters the utilization of research strategies to address scientific questions, fosters the abilities of students to communicate scientific principles and fosters critical thinking skills of students. Faculty has knowledge of the degree that students should be prepared for advanced studies and professional careers.

Petitioner Ex. 15, at 358. This evidence may also relate to how the College holds out the petitioned-for faculty, but nonetheless demonstrates that the College does not hold out the biology department as having a religious function.

Regarding other subject areas like the College's sociology and psychology programs, the College's description of those programs in the 2014-2015 Undergraduate Catalog does not portray a religious educational environment. *See* Petitioner Ex. 15, at 143-50, 164-73. As illustrated in Point II below, this is because sociology and psychology faculty are not instructed to teach about religious values.

The College's Dependency on New York State

Documents like Employer Exhibit 16 reveal that the College holds itself out as being dependent on New York State. Provost Clyde testified that he provides copies of that exhibit to faculty candidates (R. 1062).¹ Meanwhile, Barbara Fabe ("Fabe"), vice president for human resources, stated that her office provides that document to individuals hired for an adjunct position, though it is possible that an employee might not have received a copy (R. 135-36, 145).

In that information provided to prospective employees, the College discloses that:

...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, [and] on the federal government both for various funded programs and the norms for meriting the funds... .

Employer Ex. 16, at 15. Similarly, the College notes in the 2012 Self-Study submitted to the Middle States Commission on Higher Education that "[a]ll major changes to curriculum or programs must be forwarded to the New York State Education Department for approval and re-registration of the program or for the registration of the new major." Employer Ex. 95, at 110.

Regarding State funding, since Manhattan College has disclaimed sectarian status, the College continues to receive aid from New York State under the Bundy Law (R. 431-32). *See*

¹ References to the record are identified as R. ____.

Petitioner Ex. 1; N.Y. Education Law §6401(2)(a)(iv). In the Board of Trustees Report (“Trustees Report”) contained in Employer Exhibit 16, the College explains that “adjustments” at Manhattan College made it “eligible for aid from New York State under the Bundy Law.” Employer Ex. 16, at 13. The adjustments included the elimination of “compulsory religious activities”; and while students still had a requirement of courses in religious studies, Catholic courses were not required. *Id.*

Though students currently must take one (1) course in Catholic Studies, the course catalog indicates that this requirement concerns “the academic study of religion.” *See* Petitioner Ex. 2, at 278; Petitioner Ex. 15, at 151. To receive State aid under the Bundy Law, “[i]nstitutions may not require courses in religious doctrine or philosophy”; and “[m]aterials such as catalogs detailing degree requirements may be used as evidence.” *See* <http://www.highered.nysed.gov/oris/bundy/> (last visited Aug. 3, 2015); Board Ex. 6, at 5 (citing same). Accordingly, it is evident from the course catalog that the foregoing academic requirement does not constitute a compulsory religious activity and does not impact the College’s eligibility for Bundy aid. Thus, the College’s continued receipt of State aid supports that the College does not hold itself out as providing a religious educational environment.

Employer’s Evidence

It should be noted that the College offered various documents which do not support a conclusion that the College holds itself out as providing a religious educational environment. For instance, the College’s website states that the “Campus Ministry and Social Action seeks to serve students of all religious traditions.” Employer Ex. 74. The College’s promotion of

diversity – which is discussed further in Point II – does not support the College’s arguments in this matter.

Moreover, according to the College’s website, “[u]pon graduation from Manhattan College, students will be able to...[a]ssess conduct and make decisions based on ethical concerns and transcendent moral values as articulated in Christianity and other religious and philosophical traditions.” Employer Ex. 96 (emphasis added). This specific reference to “other religious and philosophical traditions” represents to the public that a discussion of ethics will not necessarily be based on Catholic or Lasallian values. Further, in another document, the College’s statement that the goal is for students to “[a]ssess conduct and make decisions based on ethical concerns” – without any mention of a basis in religion – emphasizes that the ethics learning goal is not founded in a specific religious tradition. Employer Ex. 99, at 8.

Additionally, a reader of Employer Exhibit 85 would be confused at best as to how the schedule of events reflects a religious educational environment associated with Lasallian heritage or Catholic values. Notably, both Jewish and Muslim symbols appear on the cover of the April 2015 schedule of events. Employer Ex. 85. The same symbols are found on the Mission Month poster, which states “MORE THAN 75 EVENTS IN 30 DAYS.” Employer Ex. 90. Among the scheduled events are events organized by the Muslim Student Association. Employer Ex. 85. Many of the events concern academic subjects unrelated to religion or social or athletic activities, like Tae Kwon Do on April 6 or an off-campus trip to the Central Park Zoo on April 11. *Id.* Thus, one would be hard-pressed to conclude that the College has a specific religious educational environment from reading Employer Exhibit 85.

An event listed in Employer Exhibit 85 is “Agape Latte with Dr. Jovita Geraci and Dr. Robert Geraci of the Religious Studies Department.” A screenshot of that video clip is found in

Employer Exhibit 70, a document which indicates that “[s]peakers address topics such as a friendship, hope...[and] dating... .” Employer Ex. 70. The actual video, which one can access on the College’s website, does not capture a discussion about a religious educational environment. Instead, the discussion surrounds the two (2) professors’ tattoos. *See* Employer Ex. 121B.

Evidence also showed that the events listed in Employer Exhibit 102 addressed topics from an academic perspective – consistent with Employer Exhibit 42 discussed further below – and do not reflect a religious educational environment. The October 21 lecture was an “academic lecture” – or “ACADEMIC LECTURE” as Paul Dinter (“Dinter”) wrote in a July 2, 2013 email. *See* Employer Ex. 102, 126. As Dinter’s July 2 email indicates, the October 23 event was an “Interfaith Prayer Service,” which anyone in attendance would know considering the service was “led by a Jewish, a Catholic, and a Muslim woman” (R. 1325). *See* Employer Ex. 126. Attendance at the 2013 event was “completely voluntary”; and as Dinter explained, his involvement in this event was not required (R. 1324-25).

In light of the above evidence, the Region should find that it has jurisdiction because the threshold requirement under *Pacific Lutheran* has not been satisfied.

POINT II

MANHATTAN COLLEGE DOES NOT HOLD OUT THE PETITIONED-FOR FACULTY AS PERFORMING A SPECIFIC ROLE IN CREATING OR MAINTAINING A RELIGIOUS EDUCATIONAL ENVIRONMENT

Under *Pacific Lutheran*, 361 NLRB No. 157 at 7, if a “university meets the threshold requirement of showing that it holds itself out as providing a religious educational environment,” the Region must “then examine whether the university holds out its petitioned-for faculty members as performing a specific role in creating and maintaining that environment.” As the Board explained in *Pacific Lutheran*, 361 NLRB No. 157 at 8:

Faculty members who are not expected to perform a specific role in creating or maintaining the school’s religious educational environment are indistinguishable from faculty at colleges and universities which do not identify themselves as religious institutions and which are indisputably subject to the Board’s jurisdiction... .

In conducting this inquiry, *Pacific Lutheran* specifies that the Region should “rely on the institution’s own statements about whether its teachers are obligated to perform a religious function... .” *Id.* at 9. A religious function would mean that faculty members are required to:

...integrat[e] the institution’s religious teachings into coursework, serv[e] as religious advisors to students, propagat[e] religious tenets, or engag[e] in religious indoctrination or religious training... .

Id. Requiring “faculty to conform to [a university’s] religious doctrine” would also constitute a religious function. *Id.* “However, general or aspirational statements, without specificity as to how the requirement affects actual job functions, will not suffice.” *Id.*

In this case, even if the Region were to conclude that Manhattan College meets *Pacific Lutheran*’s threshold requirement, the College still has not shown that it holds out the petitioned-

for faculty members as performing a specific role in creating or maintaining a religious educational environment. Rather, the College's representations to current or potential students and faculty members, and the community at large, demonstrate that the Region has jurisdiction under *Pacific Lutheran*.

The Board held in *Pacific Lutheran*, 361 NLRB No. 157 at 9, that "[a]ppropriate evidence to assess this requirement [may] include, but [is not] limited to, job descriptions, employment contracts, faculty handbooks, statements to accrediting bodies, and statements to prospective and current faculty and students." Such evidence is contained in the record and conclusively demonstrates that the College's adjunct faculty are not required to create or maintain a religious educational environment.

Academic Freedom

The College emphasizes to applicants that faculty have academic freedom. The Trustees Report provided to prospective employees informs them that:

...As an institution of higher learning, however, the mission of the College within the Church 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. Implicit in church approval to function as a College is the recognition that Manhattan must first be a college with characteristic academic freedom for teachers to pursue research and to present the truth as they see it with critical and professional objectivity... .

Employer Ex. 16, at 15. *See also* Employer Ex. 14. The Trustees Report then highlights for prospective employees the College's endorsement of "the statement on academic freedom of the **non-sectarian** American Association of University Professors... ." Employer Ex. 16, at 15 (emphasis added). The Trustees Report further suggests that in the future, the College should

“continue to maintain the principle of academic freedom in the classroom under the stewardship of professionally responsible faculty... .” *Id.* at 16.

The faculty handbook also makes clear that faculty have academic freedom. Petitioner Ex. 14, at 108-09. The faculty handbook states that “[t]he teacher is entitled to freedom in the classroom in discussing his subject” and that “[l]imitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.” *Id.* at 109. This statement is accompanied by interpretive comment 3 appearing on page 112 of the faculty handbook, which indicates that “[m]ost church-related institutions no longer need or desire the departure from the principle of academic freedom...and we do not now endorse such a departure.” *Id.* at 112.

Similarly, the testimony of department chairs and adjunct faculty, discussed further below, illustrated that there are no written limitations on academic freedom; rather adjuncts are told that they have academic freedom without any restrictions (R. 681-83, 1240, 1372, 1375). This emphasis on academic freedom relates to the fact that faculty do not have a required religious function.

No Required Religious Function

President O’Donnell testified that faculty members are not told that their job responsibility is to proselytize or indoctrinate; and he did not indicate that faculty members are required “to promote” a religious educational environment (R. 826, 905). Rather, President O’Donnell stated that employees are expected to “at least...respect the Catholic identity in the institution” (R. 826). What President O’Donnell tells “all faculty” is that they are to “at least...respect the tradition” (R. 899-900).

Fabe also described a time where she told a “job applicant” that the College was “welcoming to all faiths...and you know we’re hopeful that although somebody may choose to participate or not[,] that they respect the Catholic culture” (R. 135). Fabe further stated:

...[W]e know that not everybody who works at the college is Catholic or will be Catholic... [W]e ask people who begin working with us to always respect who we are. We ask and we hope that they will become a true member of the community and want to participate in the events, many of which are Catholic events... **We don’t demand it. It is not a requirement.** But we do hope that they do become part of that community (R. 67-68) (emphasis added).

Moreover, John Lawler (“Lawler”), a former member of the College’s Board of Trustees, testified that participation in a “Catholic mission” is not mandatory (R. 1209, 1234). Accordingly, the testimony of President O’Donnell, Fabe, and Lawler leaves no doubt that adjunct faculty are not required to create or maintain a religious educational environment.

Though the College has “Formation Programs,” which according to Dinter may be a misnomer (*see* R. 1323), the record shows that those programs are not mandatory for anyone. According to Employer Exhibit 25, such programs are “[f]or those faculty members who wish to engage more directly with the Lasallian heritage and mission of the College... .” While President O’Donnell suggested that adjunct faculty can participate in those programs “if they wish,” Provost Clyde stated that “[n]o faculty are required to participate in Formation Programs” (R. 899, 1182). Further, Fabe indicated that employees are not mandated to attend events like the Lasallian convocation, Lasallian award event, Lasallian speaker series, or any programs offered by the Campus Ministry (R. 172-73).

Fabe contextualized her above statement about “respect[ing] who we are,” as it relates to the College’s mission which applicants sign. *See* Employer Ex. 14, 94D, 127. The one-page

mission includes the wording “I will abide by this document.” *See id.* Fabe explained as follows regarding the use of the word “abide”:

...[F]or example..., I may have an applicant who says I believe in certain things that may be against the church...[a]nd I tell them that’s fine and that’s wonderful, and I don’t ask people nor do people ask me what my personal views are, but we do ask you to respect who we are (R. 190).

Again, this information signals to applicants that there is no religious component to their job duties.

With the Trustees Report, prospective employees are advised that:

...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.

Employer Ex. 16, at 14. The College also provides prospective employees with a statement from the Council for Faculty Affairs regarding the Trustees Report, wherein the College reaffirms the “commitment to academic freedom” and holds out that though “Manhattan is a Catholic institution,” this “of course, places no obligation whatsoever on anyone as far as their personal beliefs or religious practices are concerned... .” *Id.* at 17.

In addition, the Trustees Report states that the College’s “mutual respect for religious as well as cultural and ethnic differences identifies the College as catholic with a lower case ‘c’....” *Id.* at 14. That usage of the word “catholic” denotes a non-religious environment. *See* <http://www.merriam-webster.com/dictionary/catholic> (defining “catholic” as “including many different things” and being synonymous with “general..., unrestricted, [and] unspecialized”) (last visited Aug. 3, 2015). The College even states in the Trustees Report that “[w]hat it means today to call an institution – or a person, for that matter – ‘Catholic’ is open to a fair amount of

ambiguity.” Employer Ex. 16, at 12. In the Trustees Report provided to prospective employees, the College further comments that “it is true that ethics and social concerns are not the sole possession of any religious tradition... .” *Id.* at 15.

Reading the Trustees Report as a whole, it is apparent that the College does not require faculty to play a specific role in creating or maintaining a religious educational environment. This corresponds with the testimony of William Merriman, dean of the School of Education, who stated that faculty members are not required to introduce faith, values, or ethics of Catholic principles into classes (R. 220, 327). Adjunct faculty and department chairs testified to the same (R. 399, 652, 689, 1276, 1375-76, 1432).

The faculty handbook further demonstrates that adjunct faculty do not have a required religious function. In the faculty handbook, adjunct professors are mentioned four (4) times on pages 46, 48, 51, and 83. Petitioner Ex. 14. There is no indication in the faculty handbook that adjuncts are to create or maintain a religious educational environment.

Like the faculty handbook, Employer Exhibit 42 shows that “[t]he approach to the courses in [the religious studies] department is academic.” In Employer Exhibit 42, the head of the religious studies department explained that “[t]he department disavows any attempt to indoctrinate students or to proselytize [sic] for or against any particular religious faith” and that courses are designed to “have an educational value in terms of understanding the role of religion in the historical and contemporary situation of man... .” Dinter likewise explained that religious studies courses are not designed to proselytize, and that indoctrination and proselytizing “does not take place” (R. 1319, 1320). Dinter testified that it is the “academic study of religion adher[ing] to the standard way that the humanities is taught in the college whether it is critical

studies in that the history, the ups and downs you might say of any topic [that] would be necessary if you're going to have a critical approach to it... ." (R. 1319).

When the above information is considered along with evidence regarding the adjunct hiring process, it is readily apparent that adjunct faculty do not have a religious function.

Hiring of Adjunct Faculty

In the Employee Handbook, the College avers that it "hires and retains personnel solely on the basis of their ability to perform their jobs." Employer Ex. 117, at 12. Interestingly, the Employee Handbook directs "[t]hose employees who are members of a Collective Bargaining Agreement [to] also refer to the union contract." *Id.* at 9. At the hearing, Fabe identified the location where collective bargaining sessions are held at the College (R. 207-08). Thus, while the College may be challenging unionization and the Board's jurisdiction here, the record demonstrates that the College has unionized employees.

The part-time faculty salary agreement does not mention any requirement that adjuncts create or maintain a religious educational environment. What the part-time faculty salary agreement informs an adjunct is that the "appointment...requires that you perform the teaching duties assigned to you by the Chair of the Department." Employer Ex. 37, 94A, 127. Though the agreement references a requirement to "fulfill the academic obligations of faculty members outlined in the Manhattan College Faculty Handbook and the Mission Statement of the College as they apply to part-time faculty," words like Lasallian, Catholic, or religion do not appear in the agreement. *See id.* Moreover, the College's inclusion of the wording "as they apply to part-time faculty" in the agreement indicates to adjuncts that they have different requirements than full-time faculty – none of which relate to a religious function. *See id.*

The College describes the hiring of “Part-Time Faculty” in the 2012 Self-Study submitted to the Middle States Commission on Higher Education for reaccreditation. *See* Employer Ex. 95, at 105-06. Therein the College states:

The hiring of part-time faculty is determined by the needs of the individual department in consultation with the dean of the school. Part-time faculty are hired to cover sabbaticals and other leaves; to add expertise in specialized courses needed, for example, in education, communication, or engineering; and to supplement the full-time faculty in lower-level courses such as composition or mathematics. Chairs look for teachers with some experience and appropriate advanced degrees; nothing below the master’s level is acceptable except in the most unusual of cases.

Id. In this statement to the Middle States Commission on Higher Education, the College expresses that academic qualifications are the primary criteria for hiring adjuncts. The College makes no indication here that adjunct faculty are hired to create or maintain a religious educational environment.

The documentary evidence regarding the College’s hiring of adjuncts is complemented by witness testimony describing the hiring process for adjunct faculty. In *Pacific Lutheran*, 361 NLRB No. 157 at 12 n. 23, the Board considered employee testimony “as evidence of communications [the college] made to prospective faculty members.” A factor in the Board’s decision to exercise jurisdiction in *Pacific Lutheran* was that contingent faculty members testified that there was “no requirement that course material requires a religious component and no requirement that they perform any function in support of a religious educational environment.” *Id.* at 13-14.

At the hearing in the instant matter, testimony was presented from both adjunct faculty and department chairs regarding what adjunct candidates are told their duties and responsibilities

will entail. With this testimony, the witnesses unequivocally established that adjuncts are not required to perform any function in support of a religious educational environment.

The record shows that department chairs conduct the hiring of adjuncts (R. 183, 828, 1182, 1266, 1369). As such, Provost Clyde's testimony about hiring is irrelevant as he confirmed on cross-examination that department chairs interview candidates for adjunct positions and handle the adjunct hiring process (R. 1182, 1190).

As chair of the College's biology department, Evans testified about the hiring process for adjunct faculty. Evans explained that prospective adjunct candidates would call him and send him their resumes (R. 1267). Evans would keep individuals' information on file in case a need for adjuncts arose (R. 1268, 1269, 1271). When interviewing adjunct candidates, Evans would refer candidates to the College's website for information about the College having a Lasallian heritage (R. 1272).

Jeff Horn ("Horn"), who served as chair of the history department from 2009 through 2015, described the adjunct hiring process in the same vein as Evans (R. 1368). Horn maintained files of individuals interested in adjunct work and would scan those files when looking for a new adjunct (R. 1370-71). Horn would use Listservs at graduate schools in the New York area, such as Columbia and CUNY, to advertise for adjunct positions (R. 1370). At interviews with adjunct candidates, Horn would discuss the College's Catholic heritage but made sure that candidates understood "that in the classroom [they] have complete academic freedom" (R. 1372). On the limited occasions that an adjunct candidate asked Horn about the College having Lasallian heritage, Horn would refer the candidate to the College's website and "always follow that" with a statement that adjuncts "have complete academic freedom in the classroom" (R. 1375).

Horn's description of the adjunct interview process coincides with the testimony of Michael Ewing ("Ewing"). Ewing explained that in his interview for an adjunct position in the religious studies department, the department chair, Claudia Setzer ("Setzer"), indicated that "there was a remarkable amount of freedom" (R. 681-82). While Setzer mentioned "the Catholic nature of the school" at the interview, Ewing explained that it was "in the context of the importance of recognizing...that we had complete academic freedom in the Religious Studies Department...[and] that it did not impinge or impact how we structured our course, how we taught" (R. 682-83). Ewing emphasized that the takeaway from the interview was that "[w]e were academics" (R. 683).

Per the evidence, the College does not expect or require adjunct faculty to teach about Lasallian heritage or Catholic values. Evans and Horn stated that they would not tell adjunct candidates that they were required to include a discussion of religion, Lasallian heritage, or Catholic values in their courses (R. 1276, 1375-76). Evans said that he would not instruct adjuncts to include a discussion of these topics in their classes because that information was not relevant to the courses (R. 1276-77). Similarly, the College's witness, Moujalli Hourani ("Hourani"), chair of the civil engineering department, definitively stated that he does not tell adjuncts to teach about Lasallian heritage or religion (R. 1432). In Hourani's words, he does not tell adjunct faculty "to teach Catholic, or Protestant or Jew. Nothing. I don't tell them that... ." (R. 1432). Rather, Hourani just tells adjuncts "who we are and that's the end of it" (R. 1432).

Joseph Fahey ("Fahey") testified that faculty candidates for the religious studies department are not asked about Lasallian tradition or whether they are comfortable with that tradition in interviews (R. 459, 461). Fahey also testified that interviewers do not tell potential faculty that they are expected to embrace Lasallian tradition (R. 461).

Moreover, the testimony of adjunct faculty consistently and conclusively showed that the College does not represent to current or potential faculty members that they have a role in a religious educational environment. Ewing stated that neither in his interview or subsequent to the interview did the department chair indicate that Ewing should embrace Catholic heritage (R. 681, 684). Ewing and Randolph Schutz (“Schutz”), an adjunct psychology professor, testified that neither department chairs nor anyone else at the College had ever told them that they must teach students about Lasallian tradition (R. 652, 689). Schutz stated that during the hiring process, “the only things [he] remember[ed] talking about with [the psychology chair] Dr. Freedenberg were things pertinent to the teaching of psychology” (R. 646, 647). Further, Andy Korall, an adjunct in the sociology department, testified that he “wasn’t hired to teach religious values and belief systems” (R. 370, 399).

Dinter testified about the interview he had with Dr. Andrew Skotnicki (“Skotnicki”), chair of the religious studies department, before being hired as an adjunct in 2010 (R. 1316). At the interview, Skotnicki did not say anything “in particular” about what was expected of an adjunct (R. 1317).

In addition, department chairs Evans and Horn would not tell adjuncts that they would be disciplined, evaluated poorly, or terminated if they did not teach about Lasallian heritage or Catholic values (R. 1285-86, 1376-77). Horn averred that the “notion of being terminated for not teaching [Lasallian] values in a history course” was “truly inconceivable” and “would run diametrically opposed to academic freedom” (R. 1377). As an adjunct, Dinter stated that he was never informed that he would be disciplined if he did not discuss Lasallian heritage or Catholic values in courses (R. 1321).

Throughout Evans' forty (40) years at the College as a full-time biology professor, Evans was never told to discuss religion, Lasallian heritage, or Catholic values in his courses, nor did any administrator tell him that he would be disciplined if he did not teach about Lasallian heritage or Catholic values (R. 1286, 1287). Evans explained that faculty members are just not told what to teach in a course or how to teach a course (R. 1287).

The testimony from John Lawler, the College's witness, was consistent with that of the department chairs and other adjunct faculty. As an adjunct since 2007, Lawler testified that he "[a]bsolutely" has academic freedom and that "[n]o one tells [him] what to teach" (R. 1207, 1240, 1242). During his direct examination, Lawler stated that he "design[s] the course...[and] give[s] the course as [he] see[s] fit" (R. 1226). Lawler further indicated that "[n]obody directs" an adjunct "to tie your teaching in your course to the Catholic mission of the college" (R. 1226).

Hourani's testimony did not rebut the other testimony and evidence presented at the hearing. At most what Hourani's testimony showed is that in interviews he may describe to adjunct candidates his teaching methods, such as his looking at students' faces before a lecture starts (R. 1399). But in regards to what Hourani might do as a teacher, Hourani indicated that he tells adjunct candidates that "you are not supposed to do that if you don't want to" (R. 1399). Hourani ultimately "leave[s] it up to" adjuncts as to how to go about teaching their classes (R. 1409).

Hourani also stated that he tells adjunct candidates that "we want to teach the steel design and we want our students to know the steel and the concrete design, but in addition to that we are concerned more with the individual student" (R. 1398). Hourani testified that "our mission is that when [students] leave Manhattan College [they are] able to do their engineering work" (R.

1400). Hourani said that “the main thing[] is that we want our student[s] to be able to graduate and do [a] good job on the outside” (R. 1401).

Hourani further commented that certain courses cover ethics and how “we need to fill all the requirements for ABET” (R. 1421). Hourani confirmed that ABET expects a civil engineering department to teach about such things as a highway going through a poor neighborhood and a structure that may cause pollution (R. 1421-22).

Through Hourani, the Employer offered the ABET Self-Study Report for the College’s civil engineering program – a document which Hourani said he prepared (R. 1409-10). *See* Employer Ex. 129. In that report, the College describes adjunct faculty as follows:

The adjunct faculty provide an essential component of the program. In the last three years the adjunct faculty have helped us in delivering excellent education in spite of the shortage in staff. They have taught classes in Structural Analysis, Soil Mechanics Lab, Fluid Mechanics Lab, Transportation, and Water Treatment Design. Many of the adjuncts are graduates of the Department. Only adjunct faculty that are able to provide courses of a suitable quality are kept. Over the years, however, we have had other quality adjuncts beside those listed below. These adjuncts have come and gone for their own reasons, like work commitments, family commitments, leaving the area, etc.

Employer Ex. 129, at 83. This academic description of adjunct faculty is yet another indication that adjunct faculty are not held out as performing a religious function.

Overall, the testimony of the College’s witnesses, including department chair Hourani, did not establish that the petitioned-for faculty are held out as performing a specific role in creating or maintaining a religious educational environment. What the department chairs’ testimony did demonstrate, however, is that much of adjunct hiring at the College is done through word of mouth or from individuals reaching out to department chairs unsolicited about adjunct positions. For instance, Hourani described his contact with the engineering industry in

New York City and how he would ask companies to recommend possible adjuncts (R. 1396). Nonetheless, when the College did post job advertisements, the College would not specify a requirement that faculty perform a religious function.

Adjunct Job Postings

The record is replete with documentary evidence consisting of job postings for adjunct faculty positions. The College's advertisements for adjunct positions repeatedly show that adjunct faculty do not have a specific role in creating or maintaining a religious educational environment. A review of the job postings for full-time faculty – which detail faculty responsibilities – only further verifies this, as does a comparison to advertisements for administrative positions.

The College's website lists job openings for faculty. Petitioner Ex. 17. Upon visiting the website, applicants are advised that "[a]ll positions require a strong commitment to excellence in teaching as well as serving a diverse urban population" and that "[c]andidates should be adept at integrating computers into the curriculum." *Id.* Specific requirements for adjunct positions are then detailed in the individual job postings on the College's website. *See* Petitioner Ex. 18. The evidence shows that those specific requirements do not concern a religious educational environment.

A job posting for adjunct professors in mathematics states that the College "is seeking adjuncts to teach mathematics courses... ." Petitioner Ex. 18. The posting informs adjunct candidates that that the position requires "evidence of sufficient knowledge to teach the courses." *Id.* Further, according to the College's posting for an assistant or associate professor of mathematics:

Current [math] departmental faculty members have expertise in algebra, data mining, functional analysis, game theory, hyperbolic geometry, linear and non-linear optimization, logic, mathematics education, operations research, probabilistic and statistical methods, and topology.

Petitioner Ex. 19. In terms of teaching courses, candidates for the assistant or associate professor position are informed that:

...[The Applied Mathematics-Data Analytics] program is designed for students with a strong background in mathematics and a major in a quantitative field who wish to prepare for careers in business, or industry, or government, or for further study at the doctoral level... .

Id.

In seeking adjunct professors to teach astronomy, geology, meteorology, physics, introductory physics, general biology, human anatomy and physiology, ecology, and genetics, the College's job posting lists the requirements as "[d]emonstrated ability to teach the subject" and "[p]revious experience preferred." Petitioner Ex. 18. For adjunct positions teaching genetics and ecology, "[r]esearch experience in genetics (or equivalent) or ecology (or equivalent)" is a further requirement. *Id.*

Applicants for adjunct positions in the areas of sociology and anthropology are advised that "[p]roven excellence in teaching is a key factor for consideration" and that the College is "especially interested in faculty capable of fostering critical thinking... ." Petitioner Ex. 18. The posting does mention the College's mission, but merely states "[w]e are especially interested in faculty...who are sensitive to Manhattan College's mission and commitment to social justice."

Id.

A posting for adjunct professors to teach graduate counseling programs indicates that "[p]otential courses might include, among others, group counseling, research methods in

psychology and education, advanced testing, mentored research, cross cultural counseling and the bilingual extension courses... ." Petitioner Ex. 18.

The adjunct job postings on the College's website do not refer to Manhattan College as being a Catholic institution. *See* Petitioner Ex. 18. In comparison, a posting for an assistant professor position in mechanical engineering includes a statement about the College being "an independent Catholic institution of higher learning that embraces qualified women and men of all faiths, races, and ethnic backgrounds." *Id.* Another advertisement for chair of the chemical engineering department has a comparable statement, which concludes by saying that the College "is committed to excellence in teaching a diverse student body and preparing students for successful careers and fulfilling lives." *Id.* Nevertheless, on top of the adjunct job postings mentioned above, fourteen (14) other job advertisements on the College's website state nothing about the College being a Catholic institution. *See* Petitioner Ex. 18, 19.

As alluded to above, the job postings for full-time faculty are also indicative of faculty members' job descriptions. *See* Petitioner Ex. 18. These job advertisements further show that the College does not instruct, or require, prospective and current faculty to create or maintain a religious educational environment.

Per the job postings, the "[t]eaching responsibilities" of an assistant professor of chemistry "include general chemistry, physical chemistry lectures and laboratories, and other advanced laboratory courses." Petitioner Ex. 18. Similarly, an assistant professor of biochemistry's teaching responsibilities "include undergraduate biochemistry lecture and laboratory courses, as well as general chemistry and general science courses," with "[e]xtensive research involving undergraduate students...expected." *Id.*

An assistant professor of electrical and computer engineering “is expected to perform with excellence in teaching and scholarship and contribute to service activities in the School [of Engineering] and the Department.” Petitioner Ex. 18. Meanwhile, an assistant professor of civil and environmental engineering is:

...expected to teach undergraduate and graduate (MS level) engineering mechanics courses and structural courses such as steel and concrete design, structural analysis, numerical methods and computer applications, as well as other civil engineering-related courses...[and] to initiate and sustain a scholarly research program....

Id. Along with the foregoing criteria, candidates for that position were to be evaluated on the “potential for excellence in teaching, scholarly and professional activity and service to the College.” *Id.*

Candidates for tenure-track positions “at the assistant, associate, or full professor rank” in the civil and environmental engineering department were evaluated on similar criteria as the above civil and environmental engineering posting, and were informed that sustaining a scholarly research program was required. Petitioner Ex. 18. This tenure-track posting shows that professors “will be expected to teach undergraduate and graduate (MS level) engineering mechanics courses and geotechnical courses, such as, soils, foundations, geology, as well as other civil engineering-related courses.” *Id.*

There is also a posting in the civil and engineering department for an assistant or associate professor with a specialization in transportation engineering. Petitioner Ex. 18. A professor in that position is “expected to teach undergraduate and graduate (MS level) transportation courses, such as, highway design, long-span structures and pavements design, as

well as other civil engineering-related courses.” *Id.* Scholarly research is also a component of the position. *Id.*

Regarding teaching positions in the engineering department, the ABET mechanical engineering self-study further explains the expectations of faculty. The report states that:

...In addition to teaching, the faculty members are expected to participate in committee work at the departmental and College level (e.g., curriculum, lab, search, summer grants, and tenure and promotion). Also, they are expected to provide support and advise students from sophomore to senior year, including guidance and mentoring. A requirement for tenure and promotion is faculty scholarly activities leading to journal publications....

Petitioner Ex. 32, at 76. Specifically regarding adjunct faculty, the ABET mechanical engineering self-study indicates that the “pool of adjunct faculty” was increased, with “[t]ypically, three to five adjuncts teach[ing] up to six courses per semester.” *Id.* at 73. The report then lists the courses taught by adjunct faculty in the mechanical engineering program. *Id.* at 79-80. The course descriptions for those classes taught by adjuncts are found in the 2014-2015 Undergraduate Catalog, and demonstrate that adjuncts are not expected to create or maintain a religious educational environment. *See* Petitioner Ex. 15, at 333, 336, 338, 339.

Returning to the job advertisements, the posting for assistant professor of psychology specifies that faculty “will be expected to teach courses in Advanced Research Methods, Contemporary Personality Theory, Introduction to Psychology, Statistics, Research Methods, and additional courses in their field of expertise.” Petitioner Ex. 18. Candidates are informed that they “must...have a strong interest in involving undergraduate students in their ongoing research program.” *Id.*

A job advertisement for an accounting professor in the College’s School of Business states that “[r]esponsibilities include teaching undergraduate and graduate courses in accounting

and engaging in scholarly activities and participating in campus activities.” Petitioner Ex. 18. This job posting advises applicants that “[t]he department seeks candidates with expertise in tax, IT auditing, and accounting systems... .” Petitioner Ex. 18.

A posting for an assistant professor of elementary/early childhood education details seven (7) job responsibilities, including “delivering quality instruction” and “pursuing a focused area of research and scholarship... .” Petitioner Ex. 18. Of the seven (7) responsibilities listed, none state that an assistant professor will be required to create or maintain a religious educational environment.

The evidence demonstrates that the College also posts job openings on websites like HigherEdJobs.com. *See* Petitioner Ex. 21. The record includes nine (9) job postings from HigherEdJobs.com for adjunct positions in the areas of social math, environmental science, statistical research, strategic planning, U.S. health care systems, biology, industrial psychology, intercultural communication, and business writing. *Id.* The College’s job postings on HigherEdJobs.com describe the requirements for the adjunct positions, and do not indicate that adjunct faculty will be required to create or maintain a religious educational environment. There is, however, a lengthy statement at the bottom of each posting about the College’s commitment to equal employment opportunity, including the following averment:

...Equal opportunity can only be achieved through demonstrated cooperation from all members of the Manhattan College Community. We as a College Community must always demonstrate sensitivity and respect for our co-workers...of diverse cultural background. All employees are expected to make every reasonable effort to carry out the Affirmative Action plans of the College... .

Id. That is one (1) of two (2) expectations communicated to prospective adjuncts, with the other being an ability “to teach in the evenings.” *Id.*

Conspicuously absent from the job postings on HigherEdJobs.com is any statement that Manhattan College is a Catholic or Lasallian institution. *See* Petitioner Ex. 21. Instead, the College tells applicants that “[h]istorically, Manhattan College was founded by the Christian Brothers” and that the College gives “special consideration to qualified Christian Brothers when filling vacant positions.” Petitioner Ex. 21. This information is tacked onto the end of the College’s equal opportunity statement, in fine print.

A comparison of the recent faculty job postings to advertisements for administrative positions identifies a drastic difference in the expectations and requirements of faculty versus administrators. As illustrated above, the faculty job postings do not state any requirement concerning the creation or promotion of a religious educational environment. In contrast, a 2009 job posting for a Vice President for Student Life position states that a “successful candidate...will be a professional who embraces our mission and is able to assure that the College’s Catholic and Lasallian values remain the foundation for student life experience.” Employer Ex. 13. Similarly, a 2009 posting for Executive Vice President and Provost indicates that the “successful applicant must embrace the college’s Lasallian traditions... .” Employer Ex. 12 (emphasis added). These requirements for administrators are strikingly different than any information communicated to faculty or the non-religious duties required of adjuncts.

Faculty Information on the College’s Website

Like the job postings, faculty profiles and other faculty information appearing on the College’s website do not contain any representation that faculty perform a role in creating a religious educational environment. The profile of biology professor Evans is illustrative of this,

as it makes no mention of a religious educational environment. *See* Petitioner Ex. 29. Evans' web profile emphasizes his teaching of biology and his expertise in that field. *Id.*

The biochemistry program overview similarly reveals to prospective and current faculty and students, or any visitor of the College's website, that faculty members serve an academic purpose unrelated to a religious educational environment. *See* Petitioner Ex. 22. The biochemistry overview states that "[t]he goal of the biochemistry curriculum is to give students a solid background in this unique discipline that combines chemistry and biology...[and] to give students an understanding of the chemistry of life." *Id.* The program description represents to the community at large that "[o]ur history of teaching excellence has always included introducing our students to sound scientific research." *Id.* The biochemistry overview even refers to adjunct faculty, stating that "[t]hese faculty members are first and foremost teachers interested in and capable of teaching undergraduate students." *Id.*

Adjunct faculty are also listed in the 2014-2015 Undergraduate Catalog, starting on page 498. *See* Petitioner Ex. 15, at 498-510. When referring to adjunct faculty on these pages in the catalog, which is available on the College's website, the College states nothing about adjuncts creating or maintaining a religious educational environment (R. 1025-26).

Also, on the College's website, prospective and current students and faculty can access course evaluation information, which students complete for a course. *See* Petitioner Ex. 31. There is no mention or representation in the course evaluation form of teachers being evaluated in regards to creating or maintaining a religious educational environment. Petitioner Ex. 30. The twelve (12) criteria used to evaluate a teacher's course have no reference to an ability to create or maintain a religious educational environment. *Id.*

Generalized Statements

In *Pacific Lutheran*, 361 NLRB No. 157 at 8, the Board indicated that “[g]eneralized statements that faculty members are expected to...support the goals or mission of the university are not alone sufficient,” especially “when the university also asserts a commitment to diversity and academic freedom.”

On its website, the College states generally that it “expect[s] our faculty, administration and staff to be knowledgeable about our mission and to make a positive contribution to that mission.” Petitioner Ex. 16. After describing itself in Petitioner Exhibit 16 as “an independent Catholic coeducational institution in the Lasallian tradition” and mentioning the mission, the College explains that it is “committed to diverse campus community” and “consider[s] all employees and applicants for employment without unlawful discrimination as to...religion...” Petitioner Ex. 16. These statements appear on a web page different than the one containing specific faculty job postings. See Petitioner Ex. 17.

As the Board rightfully held in *Pacific Lutheran*:

...These types of representations...give no indication that faculty members are expected to incorporate religion into their teaching or research, that faculty members will have any religious requirements imposed on them, or that the religious nature of the university will have any impact at all on their employment... .

361 NLRB No. 157 at 8. Therefore, consistent with *Pacific Lutheran*, this evidence shows here that “religion has no bearing on faculty members’ job duties or responsibilities.” *Id.*

Speeches to Employees

Besides Petitioner Exhibit 16, the College's commitment to diversity is obvious in other evidence as well. When the Board asserted jurisdiction in *Pacific Lutheran*, the Board recognized that the university welcomed the diversity of its faculty, stating in a flyer that:

“...We embrace diversity with great joy. On our campus we have professors, staff, and students of every race, many nationalities, different Christian traditions, different faiths, or no faith...”

361 NLRB No. 157 at 13. Accordingly, the College's promotion of diversity here is a relevant factor.

In the current case, Provost Clyde spoke of the College's diversity in his August 27, 2013 faculty convocation remarks, stating:

...[W]e know that members of our community represent a wide range of views on faith and faith tradition – a diversity we value and celebrate... As I say to every faculty candidate I interview, we are not all Brothers, we are not all Catholic, we are not all Christian, we are not all religious, but we do share a sense of the critical importance of faith questions in the lives of our students (and ourselves). The presence of Buddhists, Hindus, Taoists, Muslims, Jews, and those not affiliated with any religion give our exploration of faith “color” and perspective. As I understand our religious studies faculty often say, we need to practice “hermeneutics of appreciation” of our varied faith traditions.

Employer Ex. 93, at 4. Like *Pacific Lutheran*, the presence of this evidence in the current matter shows that the College does not hold out faculty as performing a specific role in creating or maintaining a religious educational environment.

The record also contains a September 7, 2007 new employee orientation speech from Brother Thomas Scanlan (“Scanlan”), which demonstrates that there is no mandate that faculty perform a religious role. Employer Ex. 17. This 2007 speech is available on the College's website (R. 139). See Employer Ex. 17.

In the speech, Scanlan addressed an “issue in terms of our expectations,” stating that “we have different roles, and we have different comfort levels, and we don’t want people to get outside their comfort level.” Employer Ex. 17, at 4. Scanlan recognized that “everybody is not comfortable in joining into the faith community, becoming part of the Lasallian Education Committee and its activities... .” *Id.* at 5. Scanlan merely extended an “invitation” relating to Lasallian heritage and repeatedly emphasized that employees need not do something that they are uncomfortable with. *Id.* at 4, 5.

In the 2007 speech, Scanlan even compared Manhattan College to Harvard University, a secular institution. *See id.* at 4-5. Scanlan made the following statement about a report concerning Harvard:

Anyway, the report says, Harvard is a secular institution but religion is an important part of our student’s [sic] lives. When they get to college [at Harvard], students often struggle to sort out their relationships between their own beliefs and practices and those of fellow students, and the relationship of religious belief to the resolutely secular world of the academy [Harvard]. It is important for students to have the opportunity to learn something about the impact religious belief and practice has on the world as well as themselves. So this is what I am talking about in terms of support.

Id. at 4-5. As Scanlan continuously reiterates that the College is not asking employees to do something outside of their comfort level, Manhattan College’s self-comparison to Harvard – a secular university that does not provide a religious educational environment – highlights that Manhattan College represents to faculty that their required duties are academic in nature, not religious.

Adjunct Orientations

Notwithstanding Scanlan's speech, Fabe explained that adjunct faculty were not required to attend new employee orientations, like the one held on September 7, 2007 (R. 205-06). Instead, starting in January 2011, Provost Clyde would hold separate orientations for newly-hired adjunct faculty (R. 1190). *See* Employer Ex. 116. Aside from the first adjunct orientation in January 2011, the record indicates that adjunct orientations would be held in August. Employer Ex. 116. However, adjuncts were not compelled to attend these orientations either.

Provost Clyde testified that newly-hired adjuncts were not required to attend orientation, and that an adjunct would not be fired or disciplined in any way for not attending orientation (R. 1192-93). In fact, a comparison of the adjunct orientation sign-in sheets and probable attendee lists contained in Employer Exhibit 116 to the list of new adjuncts reveals that most adjuncts would not attend orientation. For example, approximately twenty (20) out of fifty-eight (58) adjuncts attended the orientation held on August 21, 2014. *See* Employer Ex. 116; Petitioner Ex. 20B. Accordingly, there were many adjuncts who did not receive the information stated at an orientation.

Nonetheless, Dinter testified about the January 2011 orientation for adjuncts, which he attended (R. 1326-27). While President O'Donnell mentioned Lasallian tradition at this orientation, Dinter stated he did not recall anything specific being said about what adjuncts were expected to do in relation to Lasallian heritage (R. 1327).

Irrelevant Evidence

At the hearing, the Employer offered irrelevant and misleading evidence which the Region can disregard. Employer Exhibit 76 is an example of this.

Employer Exhibit 76 does not concern an orientation for adjunct faculty. Employer Exhibit 76 states that it is a “New Faculty Orientation Resource Document for August 2014.” Brother Jack Curran (“Curran”) testified that it was “for new faculty orientation” (R. 968). Moreover, the agendas for adjunct faculty orientations show that Curran is not a part of adjunct orientations. *See* Employer Ex. 116. Rather, Provost Clyde stated that the College’s president and “key personnel...like the Registrar of the Library” participate in adjunct orientations (R. 1190).

Further, Curran testified about the CCIS seminars mentioned in Employer Exhibit 76, and how Curran “was going to reconnect with these new faculty” in October and November at those seminars (R. 969). *See* Employer Ex. 76, at 3. The record ultimately confirmed, however, that adjuncts did not attend the CCIS seminars – further demonstrating that Employer Exhibit 76 does not pertain to adjuncts. A comparison of the faculty names in the 2014-2015 Undergraduate Catalog to those in Employer Exhibit 78 elucidates that no adjunct attended the CCIS Sessions for “New Faculty.” *See* Petitioner Ex. 15 (containing the names of full-time faculty starting on page 478 and a list of part-time adjunct faculty commencing on page 498). Thus, the catalog shows that the CCIS seminars and Employer Exhibits 76 and 78 are irrelevant, as they do not concern adjunct faculty.

As another example of irrelevant evidence, while the College tried to portray Lois Harr (“Harr”) as an adjunct, the evidence concerning Harr relates to her position as Director of Campus Ministry. The College attempted to suggest that Harr received the Lasallian Award as an adjunct. But documents like Petitioner Exhibit 13 and Employer Exhibit 19, which list Harr under the administrator award recipients and state that Harr is being presented with the administrative award as Director of Campus Ministry and Social Action, definitively show that

Harr received the award as an administrator. Moreover, Fabe's testimony indicates that a part-time adjunct would not be eligible for the Lasallian Award, as Fabe stated that the award only goes to full-time employees (R. 199). Accordingly, the information regarding Harr has no bearing on this matter.

Similarly, Employer Exhibit 115G and Provost Clyde's testimony about that exhibit demonstrate that Dr. Emmanuel Ago ("Ago") and Harr did not serve on the Campus Ministry task force as adjuncts. Instead, Ago was on the task force as the Assistant Vice President of Student Life, and Harr in her capacity as Director of Campus Ministry and Assistant to the Vice President for Student Life (R. 1187-88). Likewise, Harr was on the 2014-2015 Campus Ministry Committee as Director of Campus Ministry (R. 1186-87). *See* Employer Ex. 114, at 5.

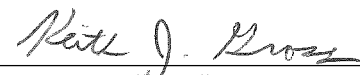
CONCLUSION

Even if the Region concludes that the threshold requirement has been met, the comprehensive evidence recounted above proves that the College does not hold out the petitioned-for faculty as performing a specific role in creating or maintaining a religious educational environment. Based on the evidence, the College simply cannot argue that adjuncts are told or required to play a specific role in creating or maintaining a religious educational environment. Accordingly, the facts establish that the Region should re-assert jurisdiction over Manhattan College, in accordance with *Pacific Lutheran*, and count the ballots so that the petitioned-for employees can exercise their rights under the National Labor Relations Act.

Dated: New York, New York
August 6, 2015

Respectfully submitted,

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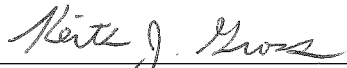
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document is being served this day upon the following persons, by electronic mail, at the addresses below:

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Dated this 6th day of August, 2015.

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