

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MARYWOOD UNIVERSITY
Employer

and

Case 04-RC-173160

MARYWOOD UNIVERSITY FACULTY
ASSOCIATION a/w PENNSYLVANIA
STATE EDUCATION ASSOCIATION
Petitioner

ORDER

The Requests for Review by the Employer and the Petitioner of the Acting Regional Director's Decision and Order are denied as they raise no substantial issues warranting review.¹

¹ We affirm the Acting Regional Director's decision to dismiss the petition on the basis that the petitioned-for faculty employees are managerial employees and therefore excluded from employee status under the National Labor Relations Act. However, in denying the Petitioner's request for review on this issue, we do not adopt the rationale of the Acting Regional Director. See Board's Rules and Regulations, Sec. 102.67(g); *Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13, slip op. at 1 fn. 1 (2017). We further find it unnecessary to pass on whether the Acting Regional Director properly asserted jurisdiction under *Pacific Lutheran University*, 361 NLRB No. 157 (2014), at this self-identified religious university.

Chairman Miscimarra concurs with his colleagues that the Acting Regional Director properly dismissed the petition in this case on the basis that the petitioned-for faculty members are managerial employees and therefore excluded from employee status under the Act. However, he would also find, contrary to the Acting Regional Director, that the University is a religiously affiliated institution that is exempt from the Board's jurisdiction.

As the Chairman explained in his separate opinion in *Pacific Lutheran University*, 361 NLRB No. 157, slip op. at 26–27 (2014) (Member Miscimarra, concurring in part and dissenting in part), when determining whether a religious school or university is exempt from the Act's coverage based on First Amendment considerations, he believes the Board should apply the three-part test articulated by the Court of Appeals for the District of Columbia Circuit in *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002). Under that test, the Board has no jurisdiction over faculty members at a school that (1) holds itself out to students, faculty and community as providing a religious educational environment; (2) is organized as a nonprofit; and (3) is affiliated with or owned, operated, or controlled, directly or indirectly, by a recognized religious organization, or with an entity, membership of which is determined, at least in part, with reference to religion. *Id.* at 1343. Applying that test to the facts of this case, the parties

PHILIP A. MISCIMARRA,	CHAIRMAN
MARK GASTON PEARCE,	MEMBER
LAUREN McFERRAN,	MEMBER

Dated, Washington, D.C., May 5, 2017

stipulated that the University holds itself out to the public as providing a religious educational environment. In addition, as the record shows, the University is organized as a nonprofit, and is affiliated with the Catholic Church and the Sisters, Servants of the Immaculate Heart of Mary. Accordingly, the Chairman would also decline to assert jurisdiction over the petitioned-for faculty members because, in his view, the University is exempt from coverage of the Act. See *Seattle University*, 364 NLRB No. 84 (2016) (Member Miscimarra, dissenting); *Saint Xavier University*, 364 NLRB No. 85 (2016) (Member Miscimarra, dissenting).