

UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

SEATTLE UNIVERSITY

**Employer**

and

Case 19-RC-122863

SERVICE EMPLOYEES INTERNATIONAL UNION,  
LOCAL 925

**Petitioner**

**2<sup>nd</sup> SUPPLEMENTAL DECISION AND ORDER**

The above-captioned matter is before me on remand from the National Labor Relations Board (Board). On April 17, 2014, I issued a Decision and Direction of Election. The Employer appealed my Decision to the Board. Following a mail ballot election held from May 14 to June 2, 2014, the ballots were impounded.

On December 16, 2014, the Board issued its decision in *Pacific Lutheran University*, 361 NLRB No. 157, revising its standards for declining jurisdiction over faculty members at self-identified religious colleges and universities and determining faculty managerial status. Following that decision, the Board issued an order remanding this proceeding to me for further appropriate action consistent with *Pacific Lutheran University*, including reopening the record, if necessary.

On March 3, 2014, I issued a supplemental decision finding that the record was sufficient without reopening. However, on June 12, 2015, the Board granted the Employer's Request for Review of my supplemental decision and remanded the case to me to reopen the record. Therefore, on July 10 and 13, 2015, an additional hearing before a hearing officer was held to allow the parties to present additional evidence relevant to the Board's new standard announced in *Pacific Lutheran University*.

Therefore, upon the entire record in this proceeding, I make the following findings and conclusions.<sup>1</sup>

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<sup>1</sup> Upon the entire record in this proceeding, I find that:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed;
- b. The Employer is a non-profit corporation for education purposes with its principal place of business in Seattle, Washington. During the last 12 months, in conducting its operations, the Employer derived gross revenues in excess of \$1,000,000. During that same period, the Employer purchased and received at its Seattle, Washington, location goods valued in excess of \$5,000 directly from points outside of the State of Washington. The Employer is therefore engaged in commerce within the meaning of the Act;
- c. The labor organization involved claims to represent certain employees of the University;

## I. SUMMARY

Seattle University (hereinafter "Employer" or "University") is an institution of higher learning with its campus in Seattle, Washington, and a small satellite facility in Bellevue, Washington. The Petitioner seeks a unit of all non-tenure eligible contingent faculty<sup>2</sup> employed by the University except those teaching in nursing and law.<sup>3</sup> Petitioner stated at the first hearing that it was willing to proceed to election in any unit found appropriate by me.

In its request for review of my March 3, 2015, supplemental decision the Employer sought review only of my finding that the Board University is not a church-operated institution within the meaning of *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), and therefore that the Board may properly assert jurisdiction over the University in this case.

Because the Employer has not sought review of my finding that none of the petitioned-for faculty is managerial, this decision does not revisit that finding.

This decision solely addresses the Board's exercise of jurisdiction over the University. The Employer argues, first, that the *Pacific Lutheran University* test contains the same constitutional problems as did the Board's prior "substantial religious character test," and that the Region should instead apply the test articulated by the DC Circuit in *Univ. of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002). Because the *Pacific Lutheran University* decision governs my decision here, I will not address this contention.

The Employer also argues that it meets the *Pacific Lutheran University* standard and that therefore the Board may not exercise jurisdiction over it. In the alternative, the Employer argues that the Board should not exercise jurisdiction over the full-time non-tenure track faculty, faculty in the School of Theology and Ministry, or the faculty teaching Catholic theology. The Employer argues that because the ballots of these voters were not segregated, an entirely new election must be held.

I previously found, in my March 3, 2015, decision, that the Employer had met its burden of establishing step 1 of the standard established in *Pacific Lutheran University* that it holds itself out as providing a religious educational environment. Therefore, at the recent hearing I did not allow further evidence to be introduced regarding step 1 of that standard. This decision will focus on the new evidence introduced regarding step 2, whether the University holds the petitioned-for faculty out as performing a specific role in creating or maintaining the University's

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- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections (2)(6) and (7) of the Act.

<sup>2</sup> The terms non-tenure track, non-tenure eligible, and contingent will be used interchangeably herein.

<sup>3</sup> The petition additionally excluded the following: professors emeritus, tenure-eligible faculty, administrative faculty, full-time staff who are not additionally compensated for teaching, administrators, department administrators, campus clergy, deans, associate deans, campus safety personnel, lab assistants, graduate assistants, teaching assistants, managers, guards, and supervisors as defined in the Act. At the hearing, the Petitioner amended its petition to also exclude the following: program coordinators, program directors, directors, clinical professor series, library faculty, research faculty, research scientists/scholars, post-doctoral scholars/fellows, truly visiting faculty, distinguished professors, professors in residence, and endowed chairs.

religious educational environment.<sup>4</sup> I will also examine whether the University holds out the full-time contingent faculty, contingent faculty in the School of Theology and Ministry, and contingent faculty teaching Catholic theology in particular as performing a specific role in creating or maintaining the University's religious educational environment,

I have carefully reviewed and considered the record evidence and the arguments of the parties both at the hearings and in their respective post-hearing briefs.<sup>5</sup> Based on the entire record in this proceeding and for the reasons set forth below, I find that the University is not a church-operated institution within the meaning of *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). After examining the Employer's representations regarding the full-time faculty, faculty in the School of Theology and Ministry, and faculty teaching Catholic theology, I find that the Employer has not met its burden of demonstrating that any of its faculty are held out as performing specific religious functions.

## II. RECORD EVIDENCE<sup>6</sup>

This decision incorporates by reference the record evidence described in the March 3, 2015, decision, as well as that introduced in the most recent hearing held July 10 and 13, 2015.

The University is a private, non-profit co-educational university. It offers undergraduate and graduate degrees at its campus in Seattle, Washington. It is organized into five colleges—Arts and Sciences, Science and Engineering, Education, Nursing, and Matteo Ricci<sup>7</sup>—and three schools—Business and Economics, Law, and Theology and Ministry, which together offer 64 undergraduate programs, 31 graduate programs, and 28 certificate programs. In the fall of 2013, the University enrolled 7,422 students (about 4,600 of them undergraduates) and employed about 329 tenured or tenure-track faculty and 437 non-tenure track faculty.

### A. Religious Nature of the University and Its Faculty

Seattle University was founded in 1891 under the "auspices" of the Catholic Society of Jesus, more commonly known as the Jesuits.

#### 1. How the University holds itself out

As described in my March 3, 2015, decision, the University holds itself out as a religious educational institution. The University is a nonprofit. It is one of the 28 U.S. Jesuit Colleges and Universities, listed in the registry of U.S. Catholic universities maintained by the

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<sup>4</sup> The President, the Provost, and the dean of the School of Theology and Ministry, who testified at the first hearing, testified again at the recent hearing. In addition, the dean of the College of Science and Engineering and two additional faculty members testified for the Employer at the recent hearing. The Employer introduced the following new documents: a brochure used for marketing the school to prospective students; the school's Admissions FAQs and About web pages; a brochure describing the school's degrees; lists of the faculty and the courses they taught in the years 2011–13; a statement on the school's educational effectiveness, required by the Association of Theological Schools; and the school's advising handbook for faculty and staff. The Union introduced appointment letters for a full-time non-tenure track faculty member and had three additional faculty members testify.

<sup>5</sup> Both parties timely filed briefs after the second hearing in this matter.

<sup>6</sup> References to the transcript will be designated as "(Tr. \_\_)." References to Employer exhibits will be designated as "(ER \_\_)." References to Union exhibits will be designated as "U \_\_."

<sup>7</sup> A small undergraduate college that offers a combined high school and undergraduate program.

Catholic Church. The University's vision statement, displayed prominently in a number of locations on its campus and website, asserts that the University "will be the premier independent university of the Northwest in academic quality, Jesuit Catholic inspiration, and service to society." The University's webpage frequently features banners on Jesuit or Catholic events. There was extensive testimony at both hearings about how the University's mission and vision statements and Jesuit Catholic identity pervade the University in all its operations.

## **2. How the University holds out the petitioned-for faculty as a whole**

Two full-time contingent faculty job postings and one adjunct faculty posting were included in the record from the first hearing (a "sample adjunct faculty position" in the English Department was also included as part of the Recruitment and Hiring Policy and Procedure). In addition, at the most recent hearing the Union introduced appointment letters for a full-time non-tenure track faculty member who teaches theater sound design. Except for identifying the school as a Jesuit Catholic university, there is no mention of God, Christianity, Catholicism, or Jesuits in any of these postings or in the appointment letters. All three postings include non-discrimination statements providing that the University does not discriminate on the basis of religion.

The University's interview guidelines mandate that it is unacceptable to ask interviewees questions about religion or creed. There is no requirement of faculty that they be Christian or Catholic or, with one possible exception addressed below, hold or inculcate any Catholic doctrine. The president of the University, Father Stephen Sundborg, testified that he asks every person who interviews with him for hire by the University how he or she will contribute to the Catholic Jesuit mission of the University. However, Sundborg interviews only candidates for dean, division head, and vice president and does not interview anyone in the petitioned-for unit. The dean of the College of Science and Engineering testified that he asks the same question of those he interviews, who include only candidates for tenure-track and multi-year appointments. Finalists for tenure-track faculty positions are provided with material on the University's mission, vision, and values and asked to write an essay that responds to them; non-tenure track faculty have no such requirement.

Three non-tenure track faculty testified for the Union at the original hearing and three at the most recent hearing. They all stated that during their interview processes there was no mention of the Catholic identity of the school. The only faculty witness testimony for the Employer on this point was a vague mention by one witness that during the job interview and the New Faculty Institute he was "strongly encouraged to speak to Jesuit values." The faculty members called by the Union at the recent hearing testified that during the application process there was no indication that the jobs for which they were applying included any sort of religious function nor had they ever been told that part of their job was to further the Catholic faith or act as spiritual advisors to students.

Two non-tenure track faculty testified for the Employer at the most recent hearing (one testified for the Employer at the previous hearing). Although all testified that they keep the mission and values of the University in mind in developing their curriculum, none indicated that they had ever been informed that, as part of their jobs, they were required to perform a religious role.

The section in the faculty handbook on faculty duties and responsibilities states that by

accepting a teaching contract with the University, “the faculty member becomes committed to the University’s mission of educating the whole person, providing professional formation, and empowering leaders for a just and humane world;” “within the context of the Catholic and Jesuit educational tradition.” There is no other reference to religion in the section on faculty duties. The subsection “Specific Responsibilities of Seattle University Faculty Members” states that faculty must maintain competence as teachers and an understanding of current developments in their disciplines; the subsection makes no reference to religion.

The section of the faculty handbook entitled “Elements of Faculty Quality,” under the subhead “General Considerations,” states that because “the religious dimension of human life is fundamental to the identity of a Jesuit university. . . [e]ach member of the faculty is expected to show respect for the religious dimension of human life.” Immediately following these “general considerations,” are “essential considerations,” which describe teaching excellence as the critical ingredient of quality for faculty and make no mention of God or adherence to any doctrine. President Sundborg testified that students have on occasion come to him to complain that their Catholicism was demeaned by professors and that he would on those occasions direct the faculty member’s department chair to remind the faculty member of that passage in the handbook. The president also testified that he would respond in the same way if a student complained about being demeaned for being Jewish or Muslim or non-religious. The president was not aware of any faculty member ever being sanctioned for conduct not in harmony with Catholic teachings.

According to the faculty who testified, adherence to Catholic or any religious doctrine plays no role in faculty evaluations. There is no mention of God, Christianity, Catholicism, or Jesuits on the student evaluations of faculty, which are the primary, and in many cases sole, method by which non-tenure track faculty are evaluated.

It would appear from Employer exhibits that approximately 10 faculty members are Jesuits, although it is not clear whether any of these 10 hold non-tenure track positions.<sup>8</sup> The Society of Jesus periodically provides the University a roster of Jesuits who are trained as academics and available for hire as faculty; to be hired as faculty, such a Jesuit priest must go through a similar hiring process as any other candidate, and once hired, these priests receive the same salary as other faculty.

### **3. How the University holds out its full-time non-tenure track faculty**

As described in my first decision in this matter, the terms and conditions of part-time and full-time contingent faculty are largely the same. The main differences seem to be that full-time contingent faculty receive benefits, some full-time contingent faculty, but no part-time faculty, are required to provide service to the University and full-time faculty are required to attend a two-day training, the annual New Faculty Institute, upon being hired; part-time faculty attend only a half-day training. President Sundborg begins this training with a speech on the school’s Jesuit Catholic inspiration. The faculty witnesses and the program for the 2013 Institute indicate that President Sundborg’s speech is the only portion of the training devoted to Jesuit Catholicism. The school’s Jesuits also host a dinner and reception during the Institute; attendance of these events is not mandatory and the only faculty witness to discuss them said he did not attend. The only faculty witness to speak in detail about Sundborg’s speech recalled it as assuring faculty that

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<sup>8</sup> See ER 9, p.4.

they were not being asked to accept Catholic doctrines or fulfill the mission in a religious way, but instead to have some "relation to mystery."

In the record are a sample full-time contingent faculty offer letter and several annual contracts for a full-time non-tenure track instructor of theater sound design and production. Neither of these documents includes any reference to religion.

#### **4. How the University holds out its faculty teaching Catholic theology**

As noted above, all undergraduate students are required to take two theology courses, one of which must include a component on the Catholic tradition.<sup>9</sup> To teach this latter course, as Provost Crawford testified, the instructor would have to have expertise in Catholic theology. He also testified that he was not aware of anyone teaching it who was not either a Jesuit or a member of the theology department or School of Theology. A number of those teaching this course are members of the petitioned-for unit.

According to the course description, this course should cause students to "reflect on questions of meaning, spirituality, ethics, values, and justice" through "knowledge of Jesuit, Catholic intellectual traditions and understanding of diverse religious traditions." According to the University's report to the Northwest Commission on Colleges and Universities, this course and the two philosophy courses required of all undergraduates "present students with a variety of philosophical and theological views, arguments and perspectives."

At the most recent hearing, the Employer introduced *Ex Corde Ecclesiae*, a document issued by Pope John Paul II in 1990 laying out what it means to be a Catholic university. Among other things, this document specifies that the number of non-Catholic teachers in the school should not be allowed to constitute a majority, "[i]n order not to endanger the Catholic identity of the University." It is unclear whether the University is abiding by this directive, although its prohibition on inquiry into religion during job applications suggests that it is not. Its School of Theology and Ministry is not following the directive, as is evident from the list of the school's faculty and their religious affiliations included in the record. That list shows 24 Catholic faculty and 39 faculty from other denominations.

The Employer also introduced *Guidelines Concerning the Academic Mandatum*, a document issued by the U.S. Conference of Catholic Bishops to guide universities in applying *Ex Corde*. According to this document, any Catholic teaching Catholic theology in a Catholic university must, within 6 months of being hired, apply to the local archdiocese for a "mandatum" an acknowledgement by a church authority that a Catholic professor "is teaching within the full communion of the Catholic Church." According to the *Guidelines*, if the professor does not obtain the mandatum within the time frame, the ecclesiastical authority must notify the appropriate authority in the university. However, the Employer is not a party to these *Guidelines* or to the mandatum. Furthermore, President Sundborg testified that the University keeps confidential which faculty have the mandatum and there was no testimony or other evidence presented as to there being any employment consequences if a Catholic faculty member fails to obtain the mandatum. While President Sundborg testified that both *Ex Corde* and the *Guidelines* are available to the public, he did not make clear how. He also testified that non-tenure track faculty are not provided with or required to read them. Nor

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<sup>9</sup> The provost testified that the portion on Catholic theology takes up about 2 of the course's 5 credit hours.

was there any testimony indicating that any faculty members are informed of these documents at hire or any other time. Throughout the hearings, witnesses consistently testified that no student or faculty member is required to adhere to or instill Catholic or Jesuit doctrine. No faculty member teaching theology testified at either of the hearings.

##### **5. How the University holds out its School of Theology and Ministry faculty**

At the most recent hearing, the Employer introduced substantial new evidence about the School of Theology and Ministry (which is separate from the Department of Theology within the undergraduate College of Arts and Sciences). Seven faculty within the petitioned-for unit teach in this school. The school does not in general train Catholic priests, and no candidates for the priesthood or priests are currently enrolled, although the school's dean, Mark Markuly, testified that upon occasion priests have enrolled. The school is a recent addition to the University. It began as a project of the University to train women religious and lay ministers for Catholic parishes. In 1995 the University entered partnerships with a number of Protestant denominations and in 1997 formally created the school.

A brochure used to market the school to prospective students contains a single reference to the University's being Jesuit Catholic and says nothing about the school's being such; the school's "About" webpage does not mention the University or the school's being Jesuit Catholic. The brochure describes the school as "an inclusively Christian school with dedication to interreligious relationships for the common good." Dean Markuly testified that the school has trained at least one Muslim student. Employer witnesses described the school as an ecumenical seminary, one of only a few such in existence. The school operates in partnership with the Catholic archdiocese and 12 other denominations, with which it has, according to testimony, signed memoranda of understanding (although none of these agreements was entered in the record). The denominations consist largely of mainline Protestant churches, such as the Episcopal Church, United Methodist Church, and the United Church of Christ, but also include the Unitarian Universalist Association. The school also has looser "community collaborations" with other Christian denominations, two Muslim organizations, a number of interfaith organizations, and several social service agencies.

Dean Markuly testified that, because courses must meet the partner denominations' criteria for ordination, the denominations review school course content and vet job candidates. However, no evidence was introduced to support this claim or to demonstrate that faculty or the public are made aware of this review.

The school offers masters degrees in transformational leadership, pastoral studies, transforming spirituality, relationship and pastoral therapy, and divinity. It offers a doctor of ministry degree and certificates in diaconal ministry (that is, serving as a deacon), transforming spirituality/spiritual direction, and pastoral leadership. The degrees in divinity and ministry are designed to prepare students for ordination as ministers of the partner denominations. Students preparing for ordination are paired with "Outreach Teams" from the denominations themselves.

Precisely what the degrees in transformational leadership and transforming spirituality are is not clear, but the list of alumni vocations includes nonprofit organizational leadership and development, social services director, public policy advocacy, and life coaching. The

pastoral studies degree appears designed to train chaplains and lay religious leaders within churches or to work within social service agencies. The relationship and pastoral therapy degree meets the requirements for becoming a licensed marriage and family therapist within Washington State, and the school brochure states that students “practice a spiritually integrated model of therapy” while being prepared to work with clients “from an array of diverse backgrounds.” According to Dean Markuly, about 50 to 60 percent of the school’s graduates go to work within a church, 20 to 25 percent work in some other faith-based organization, and the remainder work for a non-religious organization.

The “Admissions FAQs” webpage includes one question on faculty, “What faith backgrounds do your faculty come from?” The answer is, “Our core and adjunct faculty represent over 13 Christian denominations and nondenominational groups as well as from [sic] Jewish and Muslim faith traditions.”

Dean Markuly testified that most of the teachers in the school are ministers in the partner denominations and that the University typically identifies them as such. However, the school brochure does not in fact identify the religious affiliation of most of the faculty it mentions. The brochure downplays references to specific religious denominations and emphasizes instead “action” and “spirituality.” It also does not contain much material on its faculty (it includes three pages about the faculty and a few other scattered references to specific faculty members). Dean Markuly testified that in hiring for denomination-specific courses the school looks for denominational affiliation, but he also testified that the school looks to hire the most qualified candidate. There is no evidence that denominational affiliation is a requirement for any position.

The school’s “About” web pages do not mention instruction in any religious doctrine and mentions “churches, synagogues, and mosques” as the start of a list that continues “small businesses, startups and corporations, community centers, agencies, schools and universities.” The webpage states that “leadership development is the core of each of our degree’s [sic] curriculum.” It continues, “Bold leadership isn’t easy, and it’s hard to learn. Our faculty love teaching for that reason. They find no greater joy than watching students dig deep into their potential and experience life in a new way.” This is the sole reference to faculty in the “About” pages.

Students in the School of Theology and Ministry are required to attend “reflection days,” which students spend in prayer and reflection, as well as a certain number of community prayers. They are also required to lead a certain number of reflection days. Faculty are not required either to lead or to attend reflection days. Dean Markuly testified that “90, 95 percent of our classes” have prayer in them. However, there was no evidence that faculty are expected or required to include prayer in classes.

The school’s Advising Handbook for Faculty and Staff includes what Markuly called “denominational overlays,” the list of courses a student would have to take to satisfy prerequisites for ordination in specific partner denominations. These overlays are intended to help faculty advise students who are preparing for ordination. However, there is no information in the record as to whether or to what degree non-tenure track faculty in the school are required to engage in student advising.



The courses offered in the school include Greek, Hebrew, Psychopathology, Conflict Management, Psychopharmacology, and Addiction and Abuse, as well as Preaching the Word: Homiletics, United Church of Christ History and Polity, United Methodist Doctrine, Christian Ethics, and Pastoral Care Skills.

No non-tenure track faculty from the School of Theology and Ministry testified at either hearing.

### III. ANALYSIS

The sole issue raised in the Employer's request for review is the Board's jurisdiction over the University.

#### A. Board Jurisdiction Does Not Risk Church-State Entanglement.

The Employer contends that it is a religious institution and that the Board's exercise of jurisdiction would violate the First Amendment to the United States Constitution.

##### 1. The applicable legal standard

In *NLRB v. Catholic Bishop of Chicago*, the Supreme Court stated that the Act must be construed to exclude church-operated schools because to do otherwise "will necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission." *Catholic Bishop*, 440 U.S. at 502. The Board's engagement in such inquiry would violate the First Amendment. *Id.* The Court posited that Board assertion of jurisdiction over church-operated schools would "give rise to entangling church-state relationships of the kind the Religion Clauses sought to avoid." *Id.* (quoting *Lemon v. Kurtzman*, 403 U.S. 602 (1971)). The "admitted and obvious fact [is] that the *raison d'être* of parochial schools is the propagation of a religious faith." *Id.* at 503 (quoting *Lemon*, 403 U.S. at 628, Douglas, J., concurring).

For many years, the Board applied a "substantial religious character" test to assess whether, under *Catholic Bishop*, exercise of the Board's jurisdiction presents a significant risk of infringing the First Amendment. *See, e.g., Trustees of St. Joseph's College*, 282 NLRB 65, 68 (1986). However, this year, in *Pacific Lutheran University*, the Board adopted a new, two-part standard. The Board will not decline to exercise jurisdiction over faculty members at a university that claims to be a religious institution unless the university demonstrates that 1) it holds itself out as providing a religious educational environment, and 2) the university holds the petitioned-for faculty out as performing a specific role in creating or maintaining the university's religious educational environment. *Pacific Lutheran University*, 361 NLRB No. 157, slip op. at 68.

The Board's step 1 is identical to the first step of the D.C. Circuit's three-part test for exemption from Board jurisdiction. *See University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002). In step 1, the Board will give more weight to contemporary self-presentation than to founding and historical documents. *Id.* Documents demonstrating this self-presentation would include "handbooks, mission statement, corporate documents, course catalogs, and documents published on a school's website." *Id.*, slip op. at 6. This showing is "minimal," and "does not impose a heavy burden." *Id.*, slip op. at 7. Step 1 is a threshold showing.

Step 2 is where the focus of inquiry lies, namely on the petitioned-for faculty, rather than the university as a whole. Again, the focus is on how the university *holds out* these faculty, avoiding an intrusive inquiry into the nature of the religious tenets of the institution or how effective the university is at inculcating them. *Id.*, slip op. at 8. Nor will the Board look behind publicly available documents to assess the university's actual practice or investigate any individual teacher's specific actions. *Id.*, slip op. at 9. The Board will look at the school's own statements, both oral and in the form of written statements on its website, in handbooks, employment contracts, job descriptions, and similar documents. *Id.*

The inquiry is nevertheless demanding; the faculty must be held out as performing a specific religious function and "[g]eneralized statements that faculty members are expected to, for example, support the goals or mission of the university are not alone sufficient." *Id.*, slip op. at 8. When the Board applied its new standard to the facts of PLU itself, it examined the statement in the faculty constitution that a faculty member "becomes a member of a community of scholars who respect and uphold the principles of Lutheran Higher Education." *Id.*, slip op. at 12 n.22. The Board found this statement to be merely aspirational and that it did not demonstrate that faculty members were required to perform any specific religious role. *Id.*

Conversely, evidence showing that faculty members are required to integrate the institution's religious tenets into coursework, serve as religious advisors to students, propagate those tenets, engage in religious training, or conform to the tenets in a manner specifically linked to their job duties is sufficient to exempt an institution from Board jurisdiction. *Id.*, slip op. at 9. Such evidence will be found in the school's statements to students, faculty, and the public, including on its website and in its handbooks, employment contracts, and job descriptions. *Id.*, slip op. at 10. The issue boils down to "whether a reasonable prospective applicant would conclude that performance of their faculty responsibilities would require furtherance of the college or university's religious mission." *Id.*, slip op. at 9.

The Board noted, in a footnote, that the inquiry does not focus on the personal beliefs or values of faculty. *Id.* Furthermore, showing that "faculty members are held out as being required to proselytize or to indoctrinate students" is not necessary to showing they are held out as performing a specific religious function, but "there must be a connection between the performance of a religious role and faculty members' employment requirements." *Id.*, slip op. at 9, n.14. It also found a relevant question to be "the extent to which the college or university holds itself out as respecting or promoting faculty independence and academic freedom, versus focusing on religious identification and sectarian influence." *Id.*, slip op. at 9, n.15.

## **2. Employer holds itself out as providing a religious educational environment**

As found in my previous supplemental decision, the University consistently identifies itself as a Jesuit Catholic institution and publicly describes those values as inspiring the education it provides. It prominently features Catholic themes on its website, discusses its Jesuit Catholic educational environment in student orientation, mentions its Jesuit Catholic identity in its widely displayed vision statement, is registered as a Catholic university, and includes Catholic symbols on its seal. The University is organized as a non-profit institution. Therefore, the University meets the first step of the *Pacific Lutheran University* standard.

### **3. Employer does not hold out the petitioned-for faculty members as a whole as performing a specific religious function**

At the first hearing the Employer emphasized the portion of the University's faculty handbook stating that "[e]ach member of the faculty is expected to show respect for the religious dimension of human life." However, this is the sort of generalized statement that the Board in *Pacific Lutheran University* found insufficient. Indeed, it is significantly weaker than PLU's statement that faculty members must "uphold the principles of Lutheran Higher Education." The faculty handbook states that faculty "specific responsibilities" are not to serve a religious role but to "maintain competence as teachers and an understanding of current developments in their disciplines."

There is no evidence in the record that faculty members are required to serve as religious advisors to students or propagate the tenets of the Society of Jesus. With a possible exception discussed in the following section, faculty are not required to conform to the tenets of Catholicism in the course of their job duties.

None of the job postings or appointment letters in the record includes any statements that faculty members must integrate the Catholic Church's or Society of Jesus's tenets into coursework, serve as religious advisors to students, propagate the tenets of the Society of Jesus, engage in religious training, or conform to the tenets of Catholicism in the course of their job duties. Adjunct faculty witnesses testified that during the hiring process, and after, they have never been informed that they must adhere to or propagate any Catholic doctrine as part of their jobs. In short, a reasonable candidate for a contingent faculty position would not conclude that performance of their faculty responsibilities would require furtherance of a religious mission.

For these reasons, I find that the Employer has not met its burden of establishing that its non-tenure track faculty in general serve a specific role in creating or maintaining the University's religious educational environment.

### **4. The Employer does not hold out its faculty teaching theology as performing a specific religious function**

Because *Pacific Lutheran University* shifted focus from the university as a whole to the specific role of its faculty, it created the prospect that jurisdiction might extend to some but not all contingent faculty, when their roles vary. While seemingly novel, this is not unheard of in Board law. For example, the Board has long had no jurisdiction over supervisors, confidential employees, and agricultural laborers, even though it may exercise jurisdiction over other employees of the same employer. Here, the Employer raises the question whether, under *Pacific Lutheran University*, the Board can exercise jurisdiction over specific subsets of the petitioned-for faculty.

The instructors of the required course on Catholicism must of necessity integrate the tenets of Catholicism into the coursework, that is, they must explain what they are. The sole evidence that these faculty are required to hold any particular view on those tenets (or indeed any particular interpretation of what those tenets are) is the U.S. Catholic Bishops' *Guidelines*, with their requirement that Catholics teaching Catholic theology request and receive a mandatum that they are in full communion with the Catholic Church. However, the Employer did not meet its burden of demonstrating that it informed anyone in the public or prospective faculty of the Catholic Bishops' *Guidelines* or that it ever took any steps to enforce those

guidelines with respect to its faculty. That a third party announces requirements it applies to persons who happen to be employees of a university has no bearing on Board jurisdiction over the university, without proof that the university has made those requirements its own. Here, the University did not provide such proof.

**5. Employer does not hold the School of Theology and Ministry faculty members out as performing a specific religious function**

To start with the obvious, start with the name. The function of the school is to teach theology and ministry. While theology alone could be taught as a purely intellectual exercise, the pairing of theology and ministry suggests a religious function. However, it is difficult to locate the specific religious role performed by a faculty member whose contract, teaching handbook, and evaluation contain no religious criteria and who is teaching Greek or Psychopharmacology, or even Preaching the Word, to a group of Unitarian, Methodist, Catholic, Muslim, and Lutheran students.

Because *Pacific Lutheran University* directs me to focus on the University's public statements, I will focus here on the School of Theology and Ministry's marketing brochure and web pages, as these are the prime ways the school defines itself to the public. These documents downplay Jesuit Catholic identity (mentioning that identity exactly once in the brochure and not at all in the "About" webpage) and emphasize "spirituality" and "action," rather than specific doctrine. Although the *Pacific Lutheran* decision did not provide any guidance on the interplay between steps 1 and 2 of its standard, I note a certain tension between the University's emphasis on the all-pervasive nature of its Jesuit Catholic identity and its marketing of its School of Theology and Ministry with little mention of that identity. Similarly, while a faculty member teaching, for example, United Methodist Doctrine is necessarily integrating *an* institution's religious teachings into coursework, she is not thereby integrating *the Employer's* religious teachings, that is, those of the Society of Jesus, the religious institution identified with the Employer at step 1. The issue here is similar to that with the mandatum, discussed earlier; that an employee integrates a third party's doctrine into work for her employer has little bearing on whether the Board has jurisdiction over the employer.

The brochure and web pages do not provide much information on the faculty, even less identifying the faculty by religious affiliation. The University "holds itself out as respecting or promoting faculty independence and academic freedom," and although the School of Theology and Ministry does seem to have some focus on "religious identification," it is interfaith and interdenominational rather than "sectarian." See *Pacific Lutheran University*, 361 NLRB No. 157, slip op. at 9, n.15. I highlight this not to suggest that ecumenism, interest in interfaith dialogue, and inclusivity are somehow inherently less religiously valid or deeply felt than rigid adherence to orthodox doctrine. Indeed, the depth of feeling or degree of religiosity of individual faculty members, students, or University administrators has no bearing on the legal question before me, which is whether faculty members are held out as being required, as a term of employment, to perform a specific religious function.

While 50 to 60 percent of the students in the school are training to work for churches, it appears that much of the work of indoctrinating or training these students for their specific denominations is done not by faculty but by the "Outreach Teams" from the denominations. The Advising Handbook, with its denominational overlays, does seem to demand a religious function of faculty, if a mechanical one (on behalf of a third-party religion), but no evidence was entered

in the record that petitioned-for faculty are required to engage in advising. There is no evidence in the record that denominational affiliation is a requirement for any faculty position.

Given all this, reasonable prospective applicants for faculty jobs in the School of Theology and Ministry likely would conclude that performance of their faculty responsibilities would include some religious or at least spiritual element, or at least be imbued with a religious atmosphere. But it is not at all clear that such a reasonable applicant would conclude that those responsibilities would require specific “furtherance of the college or university’s religious mission.” *Pacific Lutheran University*, 361 NLRB No. 157, slip op. at 9. The Employer has not met its burden. Like the rest of the petitioned-for faculty, these faculty are appropriately subject to the Board’s jurisdiction.

### III. CONCLUSION

Based on the foregoing, my previous Decision and Direction of Election in this matter, and the entire record herein, I direct that the ballots previously collected in this matter be opened and counted.

### VI. ORDER

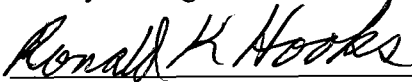
**IT IS HEREBY ORDERED** that the ballots previously impounded in this matter be counted and a tally of ballots issue.

### VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board’s Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1015 Half Street, S.E., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **August 31, 2015**.

In the Regional Office’s initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office’s initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

**DATED** at Seattle, Washington, this 17<sup>th</sup> day of August 2015.

  
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Ronald K. Hooks, Regional Director  
National Labor Relations Board  
Region 19  
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