

NLRB to Decide Organizing Rights of Non-Teaching Employees at Religious Colleges, Universities

Article By:

Howard M. Bloom

Philip B. Rosen

The National Labor Relations Board is set to decide if the same test used to determine whether teaching employees of a religious school are subject to the Board's jurisdiction should be extended to non-teaching employees. *Islamic Saudi Academy*, Case 05-RC-080474 (May 12, 2016).

In *Pacific Lutheran University*, 361 NLRB No. 157 (2014), the Board adopted a two-part test for determining whether to exercise jurisdiction over teachers at such schools under the U.S. Supreme Court's decision in *NLRB v. Catholic Bishop*, 440 U.S. 490 (1979). The Board held that a college or university claiming that it is exempt from NLRB jurisdiction must first demonstrate it holds itself out as providing a "religious educational environment". If the school satisfies that requirement, it then must show that it holds out the faculty members who a union is seeking to represent "as performing a specific role in creating or maintaining the college or university's religious educational environment, as demonstrated by its representations to current or potential students and faculty members, and the community at large."

On whether a school satisfies the second part of the test, the Board will determine whether the school holds out its faculty members as performing any religious function in creating or maintaining a religious educational environment. The Board noted that evidence in support of this requirement might include showing "that faculty members are required to serve a religious function, such as integrating the institution's religious teachings into coursework, serving as religious advisors to students, propagating religious tenets, or engaging in religious indoctrination or religious training." For more on *Pacific Lutheran University*, see [NLRB Announces New Standard for Exercising Jurisdiction Over Religiously Affiliated Colleges and Universities](#).

Islamic Saudi Academy is a non-profit private educational institution operating an elementary and secondary school at two locations in Fairfax County, Virginia. In May 2012, the Islamic Saudi Academy Employee Professional Association filed a petition to represent, among others, the Academy's non-teachers, such as nurses, IT employees, librarians, finance clerks, and internal auditors. After several procedural twists and turns, as well as issuance by the Board of its decision in *Pacific Lutheran University*, the Board ordered the case be remanded to the Regional Director "for further appropriate action consistent with its decision in *Pacific Lutheran University*."

The Regional Director decided that, assuming *Pacific Lutheran University* applies to non-teaching employees at primary and secondary schools, the Academy had not established that the non-teaching classifications were held out as performing a specific religious function and that the Board should assert jurisdiction over the non-teaching classifications. The Academy then requested review by the NLRB.

It is unclear how the second part of the test –holding employees out as performing a religious function — would be applied to non-teaching employees, since the school must show the non-teacher performs a religious function in creating or maintaining a religious educational environment. Certainly, with respect to many non-teachers, satisfying the burden of proof will be a tall order.

Jackson Lewis P.C. © 2025

National Law Review, Volume VI, Number 144

Source URL: <https://natlawreview.com/article/nlrb-to-decide-organizing-rights-non-teaching-employees-religious-colleges>