

Losing my Religion: NLRB Extends Jurisdiction over Religious Institutions

Article By:

Robert E. Entin

After millions of Americans celebrated Easter and Passover this month, the National Labor Relations Board (NLRB or the “Board”) provided a “celebration” of sorts to labor unions. In four decisions—three from the Board and one at the Baltimore regional office—the NLRB lowered the bar for organizing employees of religious institutions.

In *Saint Xavier University*, the Democratic members of the Board allowed a Service Employees International Union (SEIU) local to organize the University’s housekeepers, notwithstanding the University’s religious mission. Characterizing their jobs as “wholly secular,” the majority held:

“The housekeepers do not have any teaching role or perform any specific religious duties or functions but are confined to the secular role of providing cleaning services to the university.”

The NLRB concluded that it could properly assert jurisdiction over the matter because the housekeepers’ duties were not related to the University’s “possible religious mission.”

Less than a week later, the NLRB rejected an appeal from Duquesne University, which asserted that the school’s Catholic affiliation deprived the Board of jurisdiction. Taking the rationale in *Saint Xavier University* a step further, the Democratic majority distinguished part-time professors who taught theology and those who pursued more secular disciplines, and held that the latter can be organized. The same reasoning was applied in a case involving Manhattan College, where the Board held that it had jurisdiction over adjunct faculty, except those in the religious studies department, notwithstanding the college’s affiliation with the Roman Catholic Church.

The distinction between religious and secular activities was further highlighted when the Baltimore regional office directed an election over a group of employees working for the Council on American-Islamic Relations (CAIR). There, the Regional Director held, “The evidence establishes that the employer’s purpose is a secular one – to promote a greater understanding of the Islamic faith and Muslim people to people, organizations, and governments, regardless of creed.” Despite its religious message and distribution of publications featuring verses of the Quran and a “glossary of Muslim

terms,” CAIR’s commitment to “protecting the civil rights of all Americans, regardless of faith” was held not to further a religious mission.

The lone Republican member, Acting Chairman Philip Miscimarra dissented in the *Saint Xavier University*, *Duquesne University of the Holy Spirit*, and *Manhattan College* cases. In those cases, Acting Chairman Miscimarra argued that distinguishing between secular and religious activities raised First Amendment concerns between the separation of church and state. His dissents focused on the Supreme Court’s *NLRB v. Catholic Bishop of Chicago* decision, which held that the Board could not assert jurisdiction over the non-religious teachers at religious schools because doing so would create “a significant risk that the First Amendment will be infringed.” Acting Chairman Miscimarra further opined that the individuals in the proposed bargaining units play a role in maintaining their respective school’s religious educational environment, and consequently, the NLRB lacked jurisdiction in each case.

These decisions should give religious organizations pause. While it may take several more months for the Board’s composition to transition to a Republican majority, the NLRB currently remains in activist mode. Certain organizations should not take for granted the fact that because they are a religious organization; they are for all purposes outside the Board’s jurisdiction. As secular aspects of a religious entity now seem ripe for organizing, religious entities concerned about the Board’s rulings should prepare to undertake legal challenges in the courts to challenge Board decisions extending jurisdiction into their workforces.

© Polsinelli PC, Polsinelli LLP in California

National Law Review, Volume VII, Number 115

Source URL: <https://natlawreview.com/article/losing-my-religion-nlr-b-extends-jurisdiction-over-religious-institutions>