



Religious Affiliation Is Not Enough – The Ever-Expanding Reach of the National Labor Relations Act

Insights

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The National Labor Relations Act has been enjoying a resurgence in attention and application in recent years. From last year's thirty page memorandum from the National Labor Relations Board's Office of the General Counsel regarding "Employer Rules" reminding **all** employers – unionized or not – that handbooks may not contain any language that may have a chilling effect on employees' rights under Section 7 of the National Labor Relations Act, to President Obama's comment that Tom Brady's "Deflategate" case was an example of why unions are still important, the expansive reach of the NLRA has been at the forefront of employment law.

Recently, the Philadelphia Acting Regional Director of the National Labor Relations Board issued a decision that simultaneously exemplified the broad application of the NLRA, and reiterated the rule that faculty members at a university who serve a managerial role are not entitled to collective bargaining rights. In *Marywood University Employer and Marywood University Faculty Association a/w Pennsylvania State Education Association*, Case No. 04-RC-177160, the Regional Director explained that the NLRB is barred from asserting jurisdiction over faculty at "religiously-affiliated" schools **only** if "doing so would create a significant risk that First Amendment religious rights would be infringed." In order to take advantage of this exception, the school needed to demonstrate that it not only holds itself out as providing a religious educational environment, but that the faculty members "perform[] a specific role in creating or maintaining the school's religious educational environment." In *Marywood University*, the parties agreed that the University met the first part of the test. Despite the Regional Director's eventual conclusion that the petitioned-for faculty members have a substantial amount of control over the Marywood's operation, he concluded, however, that the University did not meet its burden to "produce evidence that it holds faculty out as performing a specifically religious function."

Unlike most secular schools, Marywood's "Core Values" begin with a "Catholic Identity. The pursuit of truth, goodness, beauty, justice, and the common good within the context of the Catholic Faith tradition and in dialogue and service with persons of diverse faiths and worldviews." Marywood's president, Sister Anne Munley, explained that the University's mission statement and core values are based on the teachings of a saint, while the Associate Vice President for Planning and Institutional Effectiveness explained that these core values "permeate" the university. Despite this religious affiliation, the Regional Director concluded that the values of the university include goals that, for the most part, are not described in religious terms, faculty members are not required to explain how

they further the Catholic religious doctrine, and the university still expresses a commitment to academic freedom and, therefore, the faculty did not perform “an explicitly religious role.”

The *Marywood University* decision underscores the idea that the NLRA enjoys a broad scope and institutions will not escape jurisdiction of the Board simply because they were founded on religious ideals and teachings. Unless encouraging those religious ideals is a paramount priority for your faculty members (or another exception applies), those faculty members will be entitled to collective bargaining benefits.

Regardless of whether your facility is unionized or remains union-free, please contact your regular Fisher Phillips attorney to ensure that you remain compliant with the National Labor Relations Act.

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