

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

<b>PACIFIC LUTHERAN UNIVERSITY</b>	)	
<b>EMPLOYER</b>	)	
	)	
<b>AND</b>	)	<b>CASE 19-RC-102521</b>
	)	
<b>SERVICE EMPLOYEES INTERNATIONAL</b>	)	
<b>UNION, LOCAL 925</b>	)	
<b>PETITIONER</b>	)	
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**BRIEF AMICUS CURIAE OF CATHOLIC SCHOLARS  
FOR WORKER JUSTICE IN SUPPORT OF PETITIONER**

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**I. STATEMENT OF INTEREST**

Catholic Scholars for Worker Justice (CSWJ) is an unincorporated association of scholars interested in the application of Catholic social justice teaching to human work. Amongst the scholars are academics some of whom are or have been at past times part-time employees of academic institutions. CSWJ understands Catholic social teaching to insist upon the primacy of divine law and to insist upon the fundamental dignity of the human person made in the image and likeness of God. Catholic social teaching gives an indispensable role to labor unions to help employees work under conditions befitting that dignity so employees may sustain themselves and their dependents. CSWJ is independent of the Roman Catholic Church.

CSWJ intends in this amicus curiae brief to address the second issue identified in the Board's Notice, viz. "2. What factors should the Board consider in determining the appropriate standard for evaluating jurisdiction under *CATHOLIC BISHOP*?"

CSWJ is of course aware that it is responding to a Notice issued in a case relating to a Lutheran University. CSWJ, however, is aware that there are *CATHOLIC BISHOP* issues now pending before the Board in cases where Catholic social teaching is directly relevant. In addition, the principles that animate Catholic social teaching resonate widely with women and men of all faiths, and none, because they reflect the dignity of every human who labors.

## II. ARGUMENT

1. THE SINGLE MOST IMPORTANT FACTOR TO CONSIDER IN APPLYING *CATHOLIC BISHOP* AT LEAST TO CATHOLIC COLLEGES AND UNIVERSITIES IS THAT CATHOLIC SOCIAL TEACHING SUPPORTS THE RIGHT TO ORGANIZE AND BARGAIN IN SUCH INSTITUTIONS.

The objection to Board jurisdiction of at least Catholic colleges and universities based on the First Amendment is completely undercut by the official teaching of the American Catholic Bishops themselves. It is of course no surprise to the Board that the Church's social teaching strongly upholds the right of women and

men or organize effectively. In a 1986 Pastoral Letter of the U.S. Bishops, *Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy*,<sup>1</sup> the U.S. Bishops said:

“ 104. The Church fully supports the right of workers to form unions or other associations to secure their rights to fair wages and working conditions. This is a specific application of the more general right to associate. In the words of Pope John Paul II, ‘The experience of history teaches that organizations of this type are an indispensable element of social life, especially in modern industrialized societies.’ Unions may also legitimately resort to strikes where this is the only available means to the justice owed to workers. No one may deny the right to organize without attacking human dignity itself. Therefore, we firmly oppose organized efforts, such as those regrettably now seen in this country, to break existing unions and prevent workers from organizing.”

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<sup>1</sup>U.S. Conference of Catholic Bishops, Washington, D.C. 1986, reissued 1996, *A Decade After “Economic Justice for All”: Continuing Principles, Changing Contest, New Challenges*.

(104, footnotes omitted)

In saying the foregoing, however, the American Bishops were not talking about everybody else except themselves. Indeed, towards the end of the Pastoral Letter, in a discrete section entitled “The Church as Economic Actor”, the Bishops said that everything they had just said also applied to the Church as an economic actor:

“347. Although all members of the Church are economic actors every day in their individual lives, they also play an economic role united together as Church. On the parish and diocesan level, through its agencies and institutions, the Church employs many people; it has investments; it has extensive properties for worship and mission. *All the moral principles that govern the just operation of any economic endeavor apply to the Church and its agencies and institutions; indeed the Church should be exemplary.*

The Synod of Bishops in 1971 worded this challenge most aptly: ‘While the Church is bound to give witness to justice, she recognizes that anyone who ventures to speak to people about justice must first be just in their eyes. Hence, we must undertake an examination of the modes of

acting and of the possessions and lifestyle found within the Church herself.””

(Id., 347; italics in original)

Catholic colleges and universities who purport to speak to people about justice are required by the Church’s own teaching to honor the right to organize effectively.

In looking then at how the Church treats its own employees, the Bishops said:

“ 353. All Church institutions must also fully recognize the rights of employees to organize and bargain collectively with the institution through whatever association or organization they freely choose. In the light of new creative models of collaboration between labor and management described earlier in this letter, we challenge our church institutions to adopt new fruitful modes of cooperation. Although the Church has its own nature and mission that must be respected and fostered, we are pleased that many who are not of our faith, but who share similar hopes and aspirations for the human family, work for us and with us in achieving this vision. In seeking greater justice in wages, we recognize the need to be alert

particularly to the continuing discrimination against women throughout Church and society, especially reflected in both the inequities of salaries between women and men and in the concentration of women in jobs at the lower end of the wage scale.” (*Id.* 353.)

The reference in the foregoing to the Church having “its own nature and mission that must be respected and fostered” may plainly be seen as a statement of confidence that the Constitution and laws of this country will protect the Church’s fundamental nature and mission from overly intrusive regulation when necessary.

What is significant is that the Bishops find no need to carve out a categorical exception for its grade schools, high schools and for colleges and universities that claim a Catholic identity. They are content to state the principles that apply to all who claim affiliation with the Church. At least the Catholic colleges and universities now before the Board can claim no support from their own bishops with regard to their categorical opposition to the organizing of full time and/or part time faculty, unless these institutions can show that the jurisdiction of the Board imperils their nature and mission, which they cannot do (*infra*).

*CATHOLIC BISHOP*, then, may be seen as a defense by the Supreme Court of the “nature and mission” of Catholic high schools which are (1) Church operated

and (2) thoroughly pervaded by Church authority,<sup>2</sup> from government regulation. With few exceptions, Catholic colleges and universities differ in every way and do not require protection from NLRB jurisdiction on an a priori or per se basis.

The Catholic colleges and universities now before the Board cannot show that they are operated by the Church. While they are religious in identity, they also cannot show that religious authority pervades their institutional lives in the way that concerned the *CATHOLIC BISHOP* court.<sup>3</sup> We think this is true of Pacific Lutheran University as well.

As others have observed to the Board, the Catholic Church does not operate Catholic colleges and universities. They are also completely different from the parochial grade school and Catholic high school whose mission is to inculcate religious tenets, customs and values throughout the educational system and do so through teachers primarily. Thus, “[r]eligious authority necessarily pervades the school system.” *Lemon v. Kurtzman*, 403 U.S. 602, 617 (1971).

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<sup>2</sup>The fact that such school teachers remain without union representation may be seen as an utter failure of the Church to create internal systems on a voluntary basis, without government regulation, to meet the moral right of grade/high school teachers to organize. The Bishops can teach but institutions claiming affiliation do not always listen as the cases now before the Board demonstrate.

<sup>3</sup>The Board has already recognized in *St. Joseph's College*, 282 NLRB 65,68 (1986) that there are a few colleges or universities that claim to be so pervasively religious in nature and mission as not to be subject to Board jurisdiction. They might be able to demonstrate that an exercise of the Board's jurisdiction would be more than a minimum intrusion. Those who are Catholic, however, nonetheless remain subject to the teaching of the American Bishops.



The question of “Catholic identity” at the college or university level has consumed these institutions for many years now precisely because they are not subject to Church authority, and they are not pervasively religious, but they are in need of articulating a validation for being both “Catholic” in some sense as well as “university.” The dialogue is on-going. Catholic identity on these campuses, however, does not depend on religious “authority” but on the competition of ideas, in a dialectic search for truth. All teachers of any faith, or none, are welcome, provided they understand that they are engaged in a values-laden educational mission that will not be fully replicated at most private and public colleges.

As an example of the foregoing, in 1967 some 25 or so Catholic university presidents and others gathered in Land O’ Lakes, Wisconsin, and issued what has become known as the Land O’ Lakes Statement on the Nature of the Contemporary Catholic University<sup>4</sup>. Pertinent to the Board’s inquiry about how to proceed in these cases are the following excerpts:

“1. *The Catholic University: A True University with Distinctive Characteristics*  
The Catholic University today must be a university in the  
  
full modern sense of the word, with a strong commitment

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The full Statement can be viewed at <http://consortium.villanova.edu/excorde/landlake.htm>

to and concern for academic excellence. To perform its teaching and research functions effectively the Catholic university must have a true autonomy and academic freedom in the face of authority of whatever kind, lay or clerical, external to the academic community itself. To say this is simply to assert that institutional autonomy and academic freedom are essential conditions of life and growth and indeed of survival for Catholic universities as for all universities.

The Catholic university participates in the total university life of our time, has the same functions as all other true universities and, in general, offers the same services to society. The Catholic university adds to the basic idea of a modern university distinctive characteristics which round out and fulfill that idea. Distinctively, then, the Catholic university must be an institution, a community of learners, or a community of scholars, in which Catholicism is perceptibly present and effectively operative.”

And:

*“4. Interdisciplinary Dialogue in the Catholic University.*

To carry out this primary task properly there must be a constant discussion within the university community in which theology confronts all the rest of modern culture and all the areas of intellectual study which it includes ...

x x x

In a Catholic university all recognized university areas of study are frankly and fully accepted and their internal autonomy affirmed and guaranteed. There must be no theological or philosophical imperialism; all scientific and disciplinary methods, and methodologies, must be given due honor and respect. However, there will necessarily result from the interdisciplinary discussions an awareness that there is a philosophical and theological dimension to most intellectual subjects when they are pursued far enough. Hence, in a Catholic university there will be a special interest in interdisciplinary problems and relationships.”

When these Catholic academic authorities say that “Catholicism is perceptibly

present and effectively operative”, they obviously are not claiming that these institutions are pervasively subject to the religious authority of the Catholic Church. Similarly, if to be truly a “university” there “must be no theological or philosophical imperialism,” then these institutions foreswear the type of religious authority that troubled the Court in the *Catholic Bishop* case. As a result, a union for faculty at a religiously sponsored or affiliated college or university does not threaten the religious freedom of a Catholic university.

The role of religion in a true “university” is not new in the Catholic tradition. In 1852, John Henry Cardinal Newman in his famous discourses on the *Idea of a University* said:

“The view taken of a University in these Discourses is the following. ... That it is a place of teaching universal knowledge. This implies that its object is, on the one hand, intellectual, not moral; ...

(Taken from the Preface<sup>5</sup>)

“Observe then, Gentlemen, I have no intention, in any thing I shall say, of bringing into the argument the authority of the Church, or any authority at all; but I shall

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<sup>5</sup>Newman, *The Idea of a University*, reprinted Doubleday (Image Books) 1959, p. 7.

consider the question simply on the grounds of human reason and human wisdom.”

(Discourse 1, “Introductory”<sup>6</sup>)

In a final point of contrast to Catholic grade schools and high schools, academic freedom in a college or university to inquire and speak freely is recognized and valued by the Catholic Church. Witness no less a Church authority than the late Pope John Paul II:

“12. Every Catholic University, *as a university*, is an academic community which, in a rigorous and critical fashion, assists in the protection and advancement of human dignity and of a cultural heritage through research, teaching and various services offered to the local, national and international communities. It possesses that institutional autonomy necessary to perform its functions effectively and guarantees its members academic freedom, so long as the rights of the individual person and of the community are preserved within the confines of the truth

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<sup>6</sup>*Id.* p. 52. At the time of his writing, Newman had just become the Rector of a newly created University of Ireland.

and the common good.

x x x

26. The university community of many Catholic institutions includes members of other Churches, ecclesial communities and religions, and also those who profess no religious belief. These men and women offer their training and experience in furthering the various academic disciplines or other university tasks.”

The nature and mission of Catholic colleges and universities is not imperiled by an exercise of Board jurisdiction. The Board needs to look no further than to those Catholic universities which have accepted the Board’s jurisdiction without raising a constitutional challenge (Georgetown, Le Moyne, and St. Francis, Brooklyn). The D.C. Circuit’s test in *University of Great Falls v. NLRB*, 278 F. 3d 1335, 1343 (D.C. Cir. 2002) is needlessly overprotective of constitutional interests. If there are specific issues in collective bargaining that become problematic, those can be addressed on an ad hoc basis going forward.

The U.S. Supreme Court has recognized for constitutional purposes the difference that characterizes Catholic colleges and universities in upholding federal funds under the Higher Education Facilities Act:

“Finally, as we have noted, these four schools subscribe to a well-established set of principles of academic freedom, and nothing in this record shows that these principles are not in fact followed. In short, the evidence shows institutions with admittedly religious functions but whose predominant higher education mission is to provide their students with a secular education.”

*Tilton v. Richardson*, 403 U.S. 672, 687 (1971).

Presumably none of these institutions which object to Board jurisdiction intend to overstate their case.

### **III. CONCLUSION**

The Catholic institutions which oppose an exercise of the Board’s jurisdiction find no support in the official teaching of the American Catholic Bishops nor in their own idea of a university which claims academic freedom in search of truth as its *raison d’etre*. Their opposition to Board jurisdiction is opportunistic, driven by their need to maximize their dollars for the work of their wonderful missions, but free of any obligation to recognize and bargain. Their opposition is really no different than that of any employer who for economic reasons would prefer not to see its workers organized. The Board is asked to consider that a union for faculty at a Catholic

college or university does not threaten the religious freedom of the institution.

Dated: March 26, 2014

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by     S.    Donald C. Carroll

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**CERTIFICATE OF SERVICE**  
**(C.C.P. Section 1013A and 2015.5)**

I, Karen E. Scannell, declare that I am a citizen of the United States, over 18 years of age, and not a party to the within action. My business address is 300 Montgomery Street, Suite 735, San Francisco, California 94104.

Upon this day, I served the following document(s):

**Brief Amicus Curiae of Catholic Scholars for Worker Justice in Support of  
Petitioner**

on the following party(s) by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

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- (D) By Overnight/Mail Courier: By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and placing each for collection by overnight mail service or overnight courier service. I am readily familiar with my firm's business practice of collection and processing of correspondence for overnight mail or overnight courier service, and any correspondence placed for collection for overnight delivery would, in the ordinary course of business, be delivered to an authorized courier or driver business, be delivered to an authorized courier or driver authorized by the overnight mail carrier to receive documents, with delivery fees paid or provided for, that same day, for delivery on the following business day.
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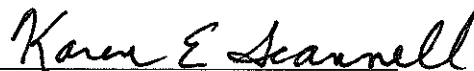
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 26, 2014 at San Francisco, California.



Karen E. Scannell