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BLOGS

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Labor Board Poised to Enable Union Organizing of Faculty, Workforce at Private Religious Schools

The National Labor Relations Board (NLRB) appears ready to extend its jurisdiction over certain private and religious schools that were previously thought exempt from the NLRB's reach. If it does assert jurisdiction in these cases, the NLRB will act to protect union efforts to organize the schools' faculty and other workforces. And just as significantly, an assertion of NLRB jurisdiction over these schools will clearly usher in the potential for direct NLRB involvement in deciding school policies.

The NLRB has several cases involving religious schools lined up for review, the earliest of which has been awaiting decision since 2011. These include cases involving Manhattan College, St. Xavier University, Duquesne University of the Holy Spirit and Islamic Saudi Academy. In all of these, unionization of the workforce, faculty and/or otherwise, is immediately at stake. The NLRB's retention of the cases for review points to the likelihood of its opening the door to union organizing at private and religious schools at all levels, from primary through graduate schools. Of course, this would mean major potential changes in the labor relations and operations of such schools. NLRB review is expected to happen sooner rather than later now that the NLRB has a full complement of five confirmed members as well as a confirmed General Counsel.

The U.S. Supreme Court ruled in 1979 that the NLRB could not assert jurisdiction over two Catholic high schools in Chicago because to do so would violate the First Amendment by excessively entangling the NLRB in religious affairs. In response to that case and to cases handed down from the District of Columbia Court of Appeals, the NLRB has adopted a test for deciding whether it may assert jurisdiction over a particular private school without running afoul of the U.S. Constitution. With the cases it has on tap for its newly confirmed majority of Democratically-appointed board members, the NLRB is strongly positioned to either directly reject its previous test for exercising jurisdiction or to apply it in a very much narrowed way, such that it will assert jurisdiction over, and afford collective bargaining rights to faculty and workers at, more religious and religion-affiliated schools than ever before.

If the Board asserts jurisdiction over these schools and their workforces then vote in favor of unionization, school management will be required to collectively bargain with faculty, and potentially other employees, over the basic terms and conditions of employment. And even if there is never a successful unionization effort at the schools, they will be under the federal labor law and will have to deal

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with the NLRBs well-known and extensive efforts to affect all manner of policies in the name of protecting workers rights to join together in advocacy against their employer.

The NLRB also has on its agenda for review cases in which it has received friend-of-the court briefing on questions relating to the status of graduate assistants and faculty under the federal labor law. Combined with the cases involving religious schools, these indicate powerful winds blowing at the NLRB that could substantially affect labor relations at many private and religious schools, including institutions of higher education. Private schools with religious affiliation and institutions of higher education that have an interest in avoiding unionization and NLRB jurisdiction over their workforce relations should watch here for developments and further comment.