

# Labor ruling has 'religious' colleges shaking

by [G. Jeffrey MacDonald](#) in the [March 8, 2011](#) issue

A small Catholic college in Riverdale, New York, recently got some news that sent shivers through many religious schools: part-time faculty have a right to form a union on campus. But that wasn't the worst of it. The National Labor Relations Board also isn't convinced that the Catholic school is actually Catholic.

According to Elbert Tellem, the NLRB's acting regional director, Manhattan College can't prohibit adjunct faculty from unionizing because the school's core purpose isn't religious enough to trigger a labor law exemption.

Claiming an infringement of religious liberty, the school is appealing the decision. Observers say the case could have implications well beyond the picturesque campus at the northern tip of the Bronx.

Religious colleges, like their secular counterparts, increasingly rely on adjunct faculty in a bid to contain payroll costs, according to the Council of Independent Colleges. Nearly one in every four teachers at CIC schools has adjunct status, and a wave of unionization could drive up education costs if and when adjuncts demand higher pay and benefits.

"All colleges . . . [that] are trying to figure out a way to make college affordable for students are going to be watching how this develops," said Michael Galligan-Stierle, president of the Association of Catholic Colleges and Universities. "Adjuncts are part of the equation."

The ramifications, however, could go deeper than finances. Religious colleges are being warned, observers say, to show that their core purpose is to "propagate religious faith" or else be treated as secular enterprises. That could pose a special problem for liberal religious organizations, which seldom require students and faculty to endorse specific creeds or doctrines.

"If the basis for the ruling is that you have to be really sort of in-your-face Catholic in order to claim the exemption, that's going to cause a huge incentive for every college in the Catholic tradition to start acting more on the conservative end of the Catholic spectrum," said Eric Rassbach, national litigation director for the Becket Fund, a nonprofit law firm that defends religious rights.

When Manhattan College was founded in 1853, the Brothers of the Christian Schools ran the college and held the majority of faculty positions. That changed over time. Now most of its faculty members are laypeople, and they aren't required to profess Catholicism.

The NLRB ruling, which noted the change in January, said federal oversight would not compromise the school's religious freedom because its "stated purpose does not involve the propagation of a religious faith, teachers are not required to adhere to or promote religious tenets, [and] a religious order does not exercise control over hiring, firing, or day-to-day operations."

If the school were more doctrinaire, the reasoning goes, then it would need freedom to employ only faithful Catholic faculty, and NLRB involvement would entangle a government agency in religious affairs.

Manhattan president Brennan O'Donnell argued in an open letter that the school is being penalized for embracing the spirit of the Second Vatican Council (1962-1965) through "intellectual openness" and a "welcoming spiritual environment."

O'Donnell continued: "The ruling suggests that the regional NLRB believes that the primary hallmarks of an authentic Catholic college or university are exclusionary hiring, a proselytizing atmosphere, and dogmatic inflexibility in the curriculum."

Manhattan College officials declined to comment further.

Some religious liberty activists see the ruling as an ominous new level of government intrusion. The case marks the first time an NLRB body has tried to force a religious institution to allow unions, Rassbach said.

In his view, regulators shouldn't be in the awkward position of adjudicating whether a self-described Catholic college is in fact Catholic. That's a decision for church authorities to make, he said. The Archdiocese of New York recognizes Manhattan College as a Catholic institution, as does the Association of Catholic Colleges and Universities.

Others see little threat in the ruling. The regional NLRB is simply applying to adjunct faculty a legal standard for church-state separation that's been in place for decades, according to Michael Broyde, an expert on church-state law at Emory University School of Law.

What's new, Broyde suggested, is that Catholic colleges are being held accountable for letting their schools become more secular. "There are more and more—particularly Catholic institutions—that are broadening their missions profoundly so that you'll have an institution where neither the students nor the faculty are Catholic," Broyde said.

Manhattan's case now heads to the national NLRB offices in Washington as the school's adjunct teachers are petitioning the school to drop its appeal.

Meanwhile, observers are debating what lessons religious colleges should derive from Manhattan College's experience.

"I'm

not that concerned about this ruling because there's an easy way to avoid it: stay true to your religious mission and don't drift away from it," said Kevin Theriot, senior counsel for the conservative Alliance Defense Fund, which provides legal representation in religious liberty cases. "The question for liberal organizations is: Are they staying true to their theological purposes?"

The Cardinal Newman Society, which polices orthodoxy on Catholic campuses, says the Manhattan case is a dangerous example of government overreach, but the group's president, Patrick Reilly, sees a potential upside. "These [government] actions are forcing Catholic institutions to reevaluate what it means to be a genuinely religious institution," Reilly said. "That may be a healthy thing."