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"Traditional" Faculty: How Can We Help?

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Duquesne, St. Xavier &

The recent success
of adjunct organizers
at Duquesne University
was a welcome sign, not only
because it showed that there
is new energy in the
movement to improve
working conditions for the
nation’s majority higher
education faculty, but also
because, initially, Duquesne
indicated that it would not
object to this on religious
grounds. According to Inside
Higher Education,
spokeswoman Bridget Fare
noted that Duquesne works
with other unions, “intends
do the same” with the
proposed adjunct union, and
that “we’ll be letting the
NLRB process take its course
and proceed accordingly.”

Had Duquesne stuck to this
original intention, it would
have been, if not a blow, at
least no comfort, to legal
teams working on behalf of
St. Xavier College and
Manhattan College, two
Catholic colleges which have
also recently been approved
by NLRB for adjunct
collective bargaining.

Instead, and very quickly,
Duquesne made a formal
objection to the National
Labor Relations Board,
which Ms. Fare then
explained as something that
the university, “founded and
owned by the Congregation of
the Holy Spirit, has
concluded … was necessary.”

Now, of course, NLRB has
rejected Duquesne’s
request—that the election be
halted—and this means

Manhattan College
... and the
NLRB*

(assuming that the adjuncts
do vote for a new union,
which seems assured) that
Duquesne will soon, like
Manhattan and St. Xavier, be
appealing the NLRB
decision.

They will be strongly
supported by the Association
of Catholic Colleges and
Universities, the Lasallian
Association of College and
University Presidents, and the
Association of Jesuit
Colleges and Universities.

Ok, then, I guess in coming
months we will all of us
become familiar, if we aren’t
already, with such cases as
NLRB v. Catholic Bishop of
Chicago (1979), which
cconcerned K-12 parochial
schools, but which gets
harkened back to regularly,
and also Universidad Central
de Bayamon v. NLRB (1986).

It was during the course of
this latter that a “three part
test” of the religious
character of a school, which
will allow it to avoid NLRB
jurisdiction, was formulated
by now-Justice Steven
Breyer, then of the 1st Circuit
Court of Appeals.

How do you know the place
is “religious” in a substantial
way?

First, it “holds itself out to
students, faculty and
community” as providing a
religious educational
environment.”

* Source: Duquesne, St. Xavier & Manhattan College: ... and the NLRB. Inside Higher Education, July 8, 2013.
Second, it “is organized as a nonprofit.”

Third, it is “affiliated with, or owned, operated, or controlled, directly or indirectly, by a recognized religious organization, or with an entity, membership of which is determined, at least in part, with reference to religion.”

Now, Duquesne is organized as a non-profit, and the rest of it—judge for yourself—seems tightly fitted to their probable arguments, at least judging by their mission statement:

*Duquesne University of the Holy Spirit is a Catholic University, founded by members of the Congregation of the Holy Spirit, the Spiritans, and sustained through a partnership of laity and religious. Duquesne serves God by serving students - through commitment to excellence in liberal and professional education, through profound concern for moral and spiritual values, through the maintenance of an ecumenical atmosphere open to diversity, and through service to the Church, the community, the nation, and the world.*

Ok, so that’s that, except for a couple of things. One, obviously, is that the 3-part test seems ripe for a serious challenge. Isn’t it a bit broad? Of course, the argument for Duquesne, and Manhattan, and St. Xavier, is likely to be that it is a crucial defense against what the founder and president of The Cardinal Newman Society, Patrick J. Reilly, calls “The NLRB’s Assault on Religious Liberty.” Oh dear.

Really, can anything that the institution itself claims as religiously based be used to avoid NLRB? Are people who are associated with “recognized” religious institutions or “entities” always, no matter what in the world they are doing, acting in their protected religious capacity? Those sorts of questions seem promising to me.

Also, at least in Duquesne’s case, the secular and the religious seem like part of a rather flexible wardrobe, with the one being slipped off and the other on whenever it seems like a good idea.

Indeed, in 1982, when Duquesne fought against a union for full-time faculty, the university discarded any type of religious argument and relied, successfully, on the 1980 *NLRB v. Yeshiva University* finding. That argument, we all know, involved a place with religious connections, for heaven’s sake, but didn’t rely on these for its entirely secular conclusion that full-timers were “managerial” and should be barred from collective bargaining.

It’d be fun if they did a similar switch now, wouldn’t it? And argue that the adjuncts are managerial”? Well, they’re not running the place, of course, but they are keeping it running — maybe "semi-managerial”?

Oh, it’s just the beginning, isn’t it? I hope that movements from within the church itself will begin to push things in a new direction, and it’s certainly easy to locate some support there, in Catholic social teaching generally, in doctrine connected to labor specifically, and in the ethical language that is so prominently featured in the chartering documents and mission statements of Catholic Colleges and Universities.

* By Alan Trevithick, Adjunct in anthropology, Fordham University, Westchester Community College, and CCNY. This originally appeared on cringingliberalelite.blogspot.com, Tuesday, June 19, 2012. It does not represent an official position of New Faculty Majority.

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