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Which side are we on?: Catholic teachers and the right to unionize

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Catholic teachers and the right to unionize

Catholic social teaching on the rights of workers to organize is clear and consistent. “The repeated calls issued within the church’s social doctrine, beginning with ‘Rerum Novarum,’ for the promotion of workers’ associations that can defend their rights,” writes Pope Benedict XVI in the encyclical “Charity in Truth,” “must therefore be honored today even more than in the past.”

What does this teaching imply for Catholic institutions? After all, perhaps one million American workers are employed by them, from hospitals and nursing homes to parish offices and parochial schools. In their 1986 pastoral letter “Economic Justice for All,” the U.S. bishops connected the dots. “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 bishops wrote. “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 Pittsburgh, two groups of Catholic educators have formed workers’ associations; they have received sharply different responses from their employers. The teachers in Pittsburgh’s Catholic high schools—and many Catholic elementary schools—have established a respectful and mutually rewarding system of collective bargaining. Meanwhile, Duquesne University and its adjunct faculty are entering litigation with university administrators citing their religious identity as a reason for rejecting collective bargaining rather than adopting it.
Duquesne has attracted more headlines. In the past few years, adjunct instructors at dozens of universities—public and private, Catholic and secular—have sought to organize and thus improve their conditions of work. Yesterday’s “adjunct faculty” were mostly working professionals who taught a course now and then in their free time, earning a small stipend. Tenured professors carried the bulk of the teaching responsibilities and earned a generous salary and benefits.

This wage and benefit structure remains in place, but the adjunct instructors have changed. Universities have cut expenses by transferring increasing amounts of their teaching load from expensive tenured faculty to cheaper adjuncts, paid between $2,000 and $4,000 per course. Many of these instructors are aspiring professors unable to find a tenured position in the new education economy. An instructor stringing together a full-time teaching load on this piecework basis is fortunate to earn $25,000 per year. John Manning, an adjunct professor at Duquesne, supplements his wages by tending bar, observing, “I make more money serving students beer than teaching them.” In addition, as “part-time” workers, adjunct instructors seldom enjoy health insurance or retirement benefits.

In 2012 adjunct faculty members at Duquesne resolved to form a union and turned to the United Steelworkers for help. (This may sound peculiar, but in Western Pennsylvania workers of all kinds have seen what the U.S.W. has done for steelworkers and asked to join. Today most of the union’s members are employed outside the steel industry.) Duquesne was initially receptive and quickly agreed to terms and conditions for a secret ballot election to be held under the auspices of the region’s National Labor Relations Board office. If a majority of the adjuncts voted for union representation, the union would be certified as their representative for collective bargaining.

“We are very pleased with how the university has worked cooperatively with the Union in the initial process leading to the election,” said U.S.W. Senior Associate General Counsel Dan Kovalik in May. “We take this as a very positive sign of how Duquesne views potential unionization and are confident that if we prevail in the election, the university will be a willing and amicable bargaining partner.”

**Reverse Gear**

The adjuncts voted for the union in a 50-to-9 landslide, but the university did an about-face. Duquesne hired Arnold Perl, a veteran union fighter from Memphis who boasts of “extensive experience counseling organizations on remaining union free.” Duquesne now contended that collective bargaining would be a threat to its religious mission and that it should not be under N.L.R.B. jurisdiction at all. “We are not unmindful of the teachings of the Catholic Church on labor,” President Charles Dougherty said in a letter published on the university website. “Nevertheless, we believe that, in the case of faculty who are central to the core of who and what we are, concerns for our religious mission are a higher priority.... We can never risk bargaining away the core tenants [tenets] of our mission.” Duquesne has taken its legal case to Washington.
Does a Catholic institution’s mission foreclose collective bargaining by faculty? This would surely come as a surprise to Bishop David Zubik, the local diocesan bishop. In April, after some tough bargaining, the Diocese of Pittsburgh signed a five-year contract with a union representing 214 lay teachers at its eight diocesan Catholic high schools. Superintendent Mike Latusek described the schools’ relationship with the teachers as “very positive and collaborative. We both want to do what’s best for the schools and preserve Catholic education in the Diocese.”

And how did the teachers overcome the hurdle of legal jurisdiction? They didn’t. The diocese is exempt from N.L.R.B. regulation. The Diocese of Pittsburgh does not bargain with the teachers’ union because the government says they must; they do it because Catholic social teaching says that is what an employer should do. They do it because of their religious identity.

**A History**

In the late 19th and early 20th centuries, when unions like the Mineworkers, the Teamsters and the Amalgamated Association of Iron and Steel Workers (predecessor to today’s U.S.W.) got their start, there was no federal labor board. Workers who formed a union had to persuade or compel employers to bargain with them, usually using strikes or boycotts. All too often labor disputes were marked by economic disruption and even violence.

In 1935, the National Labor Relations Act (the Wagner Act) brought a measure of order to this process. Workers covered by the act were free to advocate for or against unionization and could file a complaint with the newly created N.L.R.B. if an employer fired or otherwise retaliated against them for their choice. Workers could also ask the board to supervise a secret ballot election on union representation: if a majority of workers voted yes, the board certified it as their representative, and the employer was legally obliged to negotiate with the union about wages and conditions of work.

Some employees were explicitly excluded from N.L.R.A. coverage—for example, supervisory employees and farmworkers. It is widely believed that these workers do not have the right to form unions, but that is not exactly true; they just do not have access to the Labor Board. They have to operate under the pre-1935 rulebook. This is why Cesar Chavez and the United Farmworkers had to use boycotts, protests and hunger strikes to press for recognition; they were not eligible to file for a labor board election. Farmhands and foremen have every right to form unions and negotiate contracts, but they seldom succeed. Employers fire the activists or lock out the recalcitrant workers, and the workers have no legal recourse.

In 1979 the Supreme Court added another category of workers to the list excluded from N.L.R.A. coverage: Catholic school teachers. By the 1970s, lay teachers had come to outnumber vowed religious in the Catholic schools. These teachers were dedicated to their faith and expected to sacrifice for their calling, but they had not taken a vow of poverty. Indeed, it would have been unsuitable for their station in life, as many of them had families to support. This was one reason
that Catholic school teachers rushed by the thousands to form labor unions. Bishops, priests and principals across the nation reacted in different ways.

Cardinal John Cody of Chicago took a hard line, refusing to recognize and bargain with the Windy City’s Catholic teachers. When the teachers turned to the labor board, Cody contended that Catholic K-12 schools were religious institutions exempt from federal labor law. In N.L.R.B v. Catholic Bishop (1979) the Supreme Court, by a narrow 5-to-4 margin, ruled that the N.L.R.A. did not cover parochial schools.

Unions and Religious Freedom

Bishop Vincent Leonard of Pittsburgh shared many of Cardinal Cody’s concerns about religious freedom. He did not conclude, however, that because the schools were exempt from federal jurisdiction they were equally exempt from Catholic social teaching regarding the rights of labor. Working with the diocesan counsel, Nicholas Cafardi (now a Duquesne law professor); the superintendent, Rev. Hugh Lang; and the teachers, he crafted a system of labor relations preserving all the just rights workers enjoyed under the National Labor Relations Act without being subject to it. In place of the N.L.R.B., the two sides selected a mutually acceptable, neutral arbiter to supervise union elections and collective bargaining. Faculty members at all eight diocesan Catholic high schools and about half the elementary schools have opted for union representation by the Federation of Pittsburgh Diocesan Teachers.

This sort of arrangement is not unique to Pittsburgh. The National Association of Catholic School Teachers, the Pittsburgh teachers’ parent body, claims thousands of members in dozens of parish and diocesan schools across the country. Their contracts share one unique feature, though, generally called the “bishop’s clause” or the “cardinal’s clause.” In the Pittsburgh contract, the clause states that “the Diocesan Bishop shall maintain the sole prerogative to dismiss a teacher for public immorality, public scandal or public rejection of teachings, doctrine or laws of the Catholic Church.”

Brian Klisavage, the teachers’ union president, says that the clause is no problem for his members. “They knew there was a cross on the building when they walked in to teach,” he explains. They had, after all, turned down the superior wages and benefits available in the public school system in order to serve in Catholic education.

The bishop’s clause helps explain why the K-12 Catholic schools have serious reservations about National Labor Relations Act jurisdiction. When we enroll our children in Catholic schools, we entrust their teachers with considerable responsibility for their faith formation. A teacher arguing against the real presence in the Eucharist in a middle school classroom or advocating on television for abortion rights does not belong in front of Catholic schoolchildren—this is not a negotiable matter.

But is Duquesne proposing to discipline teachers who challenge Catholic doctrine on the Eucharist
or who support legalized abortion? Catholic universities generally—and appropriately—permit a
level of free inquiry not suitable to elementary or secondary education. Duquesne representatives
did not respond to repeated requests to explain their concerns in more detail.

If the university’s concerns in fact have merit, the obvious way to reconcile fealty to Catholic social
teaching and their freedom of exercise concerns would be collective bargaining outside the N.L.R.B.
framework, much the way Catholic K-12 schools in Pittsburgh do. The union actually proposed this
in late 2013, but the university declined to discuss the matter.

The Elephant in the Room

Not every Catholic university has responded this way to the organizing wave among our nation’s
adjunct faculty. When adjuncts at Georgetown began to discuss forming a union, administrators
reflected on the university’s detailed “just employment policy” rooted in Catholic social teaching and
concluded that it was the adjuncts’ decision to make. They remained neutral, and the adjuncts voted
for the union in an N.L.R.B. election. Administrators at the University of St. Thomas did not contest
adjuncts’ right to organize but argued strongly against a yes vote in the N.L.R.B. election. There, the
union was defeated by a significant margin.

The elephant in the room has little to do with unions or universities. When Health and Human
Services Secretary Kathleen Sibelius told Catholic hospitals that they would be required to provide
contraception services for employees under the Affordable Care Act, she created a firestorm of
conflict between the church and the White House over religious freedom issues. The legal issues are
not resolved, and the bitter feelings will remain for a long time.

The ill-conceived mandate has made for some sloppy analogies, opening the door to arguments like
those presented by Duquesne. But the circumstances could hardly be more different: H.H.S. is
directing the hospitals to violate Catholic principles on contraception, while the N.L.R.B. is telling
Duquesne and others to honor Catholic principles on the rights of labor.

Duquesne and the other Catholic universities adopting the same position (including Seattle
University, St. Xavier University and Manhattan College) are trying to occupy an almost
inconceivably narrow conceptual space. They are at once claiming to be too religious to be subject to
enforcement action by the N.L.R.B. yet not religious enough to honor their adjuncts’ right to
organize out of simple fidelity to Catholic social teaching, the way the Diocese of Pittsburgh does.

In 1986 the bishops rightly observed that church institutions must be “exemplary” in their practice
of Catholic social teaching. When a Catholic hospital or university respects the worker rights it
preaches, it helps to evangelize the world; when it fails to do so, it runs the risk of scandalizing the
faithful by suggesting these principles do not count. As Klisavage, himself a Duquesne graduate,
oberves, “How can the church support the rights of steelworkers and grape pickers when we don’t
support the rights of our own?”
Correction: Jan. 15, 2015

An earlier version of this article incorrectly identified the president of the Pittsburgh Diocesan teachers. He is Brian Klisavage not Daniel Klisavage.

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