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Overcoming \textit{NLRB v. Yeshiva University} by the Implementation of Catholic Labor Theory

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On February 20, 1980, a bitterly divided United States Supreme Court held that full-time faculty at Yeshiva University were “managers” and thus were not “employees” within the meaning and protection of the National Labor Relations Act. Now, after a decade, it is highly unlikely that \textit{NLRB v. Yeshiva University} will be either legislatively rectified by Congress or overruled by the Court. Many university employers have successfully invoked the \textit{Yeshiva University} decision to disenfranchise the collective voice and aspirations of faculty and to avoid the collective bargaining obligations of the National Labor Relations Act. Consequently, the post-\textit{Yeshiva} results reflect a continuing tepid positivist jurisprudence, exacerbated by artificially narrow factual and legal distinctions between “employees” and “managers.”

\textsuperscript{1} \textit{NLRB v. Yeshiva University}, 440 U.S. 672 (1980). Justice Powell wrote for the majority, joined by then Chief Justice Burger and Justices Stewart, Rehnquist, and Stevens. Justice Brennan wrote the sharply worded dissent, joined by Justices White, Marshall, and Blackmun.


\textsuperscript{3} As of January, 1989, the National Center for the Study of Collective Bargaining in Higher Education and the Professions at Baruch College of the City University of New York reported sixty-two higher education institutions affected by the \textit{Yeshiva} decision. Through 1988, 226,875 faculty at 1,027 public and private two- and four-year colleges and universities were represented by at least fifty different bargaining agents, ranging from the American Association of University Professors through the Wisconsin Federation of Teachers. In addition, many faculties were independently organized as self-constituted bargaining agents. At least twenty-three campuses have witnessed the decertification of bargaining agents as a result of \textit{Yeshiva} litigation. This does not include campuses where the employer’s withdrawal of recognition was not contested by the faculty. For the full listing of all colleges and universities, by state, with faculties represented by bargaining agents, and for the list of the twenty-three decertified sites, see Fact File, The Chronicle of Higher Education, A 14, July 12, 1989. Lexis searches in July, 1989, revealed \textit{NLRB v. Yeshiva University} cited in over 130 decisions. Some interesting post-\textit{Yeshiva} cases finding the faculty were “employees” include, for example:

- \textit{Kendall School v. NLRB}, 866 F.2d 157, 110 LC ¶ 10,916 (6th Cir. 1989);
- \textit{Loretto Heights College v. NLRB}, 742 F.2d 1245, 101 LC ¶ 11,174 (10th Cir. 1984);
- \textit{NLRB v. Cooper Union}, 783 F.2d 29, 104 LC ¶ 11,782 (2nd Cir. 1986);
- \textit{NLRB v. Florida Memorial College}, 820 F.2d 1182, 107 LC ¶ 10,005 (11th Cir. 1987);
- \textit{Marymount College of Virginia}, 280 NLRB No. 50, 1986-87 CCH NLRB ¶ 18,073 (1986);

Cases finding the faculty workers were “managers” include, for example:

- \textit{Boston University Chapter, A.A.U.P. v. NLRB}, 835 F.2d 399, 108 LC ¶ 10,260 (1st Cir. 1987);
- \textit{NLRB v. Lewis University}, 765 F.2d 816, 103 LC ¶ 11,535 (7th Cir. 1985);
- \textit{American International College}, 282 NLRB No. 16, 1986-87 CCH NLRB ¶ 18,286 (1986);
- \textit{Bradford College}, 261 NLRB 365, 1981-82 CCH NLRB ¶ 18,940 (1982);
- \textit{Duquesne University}, 261 NLRB 587, 1981-82 CCH NLRB ¶ 18,941 (1982);
- \textit{Livingstone College}, 286 NLRB No. 124, 1987-88 CCH NLRB ¶ 19,043 (1987);
- \textit{University of Dubuque}, 289 NLRB No. 34, 1987-88 CCH NLRB ¶ 19,481 (1988);

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holistic university community of scholars is further fractured, polarized, and alienated, all particularly insidious phenomena in the higher education setting.

Today, faculty who wish to organize in the face of university administration opposition must attempt to distinguish their particular situation factually from that in Yeshiva. At best, making this factual distinction is a pyrrhic victory for the "successful" faculty. If factually categorized as "employees" by the National Labor Relations Board, rather than as "managers" under Yeshiva, they will have obtained the protections of the National Labor Relations Act, but only at the expense of surrender of considerable autonomy and self-governance in the university workplace. For faculty who wish to organize at Catholic higher education institutions, there is a much more viable alternative for those faculty who wish to organize and to bargain collectively than the endlessly tedious and pyrrhic fine-tuning of factual distinctions now necessary in order to avoid Yeshiva applications.

This article suggests that in Catholic higher education environments Yeshiva may be more effectively overcome through the faculty's invocation of the Catholic Church's unequivocal and powerful social teaching on the rights of all workers, including the rights to organize and to bargain collectively. The narrow positivism of NLRB v. Yeshiva University can be defeated by the applied and higher natural law found in Catholic labor theory. This process of successfully overcoming the Yeshiva precedent can and must begin in Catholic higher education environments. Catholic institutional employers can and must implement the Catholic Church's own unequivocal social teaching on the rights of workers and thus repudiate the pernicious use of NLRB v. Yeshiva University.

Catholic labor theory has the potential to transform the world of work. Catholic employers and workers jointly share the express mandate to implement the Church's social teaching on the rights of workers and to translate the Church's preaching into active practice. In their 1986 pastoral letter, Economic Justice For All, regarding the application of Catholic social teaching within the economy, the United States National Conference of Catholic Bishops expressly declared that "the Church must incorporate into all levels of her educational system the teaching of social justice and the biblical and ethical principles that support it." Catholic institutions of higher education have a special mandate from the Bishops: "We call on our universities, in particular, to make Catholic social teaching and the social encyclicals of the popes a part of their curriculum."

The Yeshiva decision, grounded as it is on a narrow and crabbed secular positivist jurisprudence, must yield to the higher law, namely, the applied natural law of Catholic labor theory in all Catholic employment environments. Catholic employers are simply disabled from invoking the Yeshiva decision. Those

4 See note 3, supra.
5 Of course, one of the most insidious current aspects of the Yeshiva decision is that it poses a potentially serious threat to cooperative participatory labor management relations. Under current law, the more control workers exercise over their work, the more likely it is that they can be categorized as co-"managers," and thus lose the protections of the seemingly lower hierarchical status of "employees." In fact, once unprotected, it is the new "manager"/former "employee" who may be most in need of the protections of the statutory labor law. See U.S. DEPARTMENT OF LABOR, U.S. LABOR LAW AND THE FUTURE OF LABOR-MANAGEMENT COOPERATION at 11 (1986); Gregory, Lessons From Publius For Contemporary Labor Law, 38 Ala. L. Rev. 1 (1986).


8 Id. at 172.
Catholic employers who nevertheless continue to use Yeshiva to counter the aspirations of their workers, in recalcitrant defiance of the Church, may commit institutional social sin. This article posits the transformative alternative to Yeshiva, beginning with Catholic employers and workers in the realm of higher education.

NLRB v. Yeshiva University

In October, 1974, the Yeshiva University Faculty Association filed a petition with the National Labor Relations Board. The Faculty Association sought an election and NLRB certification of the Association as the exclusive bargaining representative for the full-time faculty at Yeshiva University, a private religiously affiliated university within New York City. The University opposed the petition, and argued that the faculty were "managers" or "supervisors" and not "employees" within the meaning of the National Labor Relations Act.

The NLRB granted the Faculty Association's petition and ordered an NLRB-supervised election. The Association was elected by the majority of the voting faculty and was certified as the faculty's exclusive bargaining representative by the NLRB. The University refused to recognize the Association and refused to bargain collectively with it. The NLRB found these University actions were unfair labor practices in violation of the NLRA, and ordered the University to recognize and to bargain collectively with the Faculty Association.

After the Second Circuit denied the NLRB's petition for enforcement of its bargaining order, the United States Supreme Court granted the Board's petition for certiorari. The Court held, five-to-four, that full-time faculty members of the religiously affiliated University were managers, not employees, and thus were excluded from the collective bargaining protections afforded under the National Labor Relations Act.

The Board first asserted jurisdiction in higher education in 1970 and shortly thereafter approved faculty bargaining.

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13 582 F.2d 686, 84 LC ¶ 10,732 (2nd Cir. 1978).


units, reasoning that faculty were "professional employees" within the purview of the Act and, as such, were entitled to the protection of bargaining. The University challenged neither the Board's authority to act nor its classification of the faculty as "professionals." Rather, it asserted that the faculty were "supervisors" or "managers" and not entitled to bargain. Since the Court agreed with the Second Circuit's finding that the faculty were managers, it did not address the status of the faculty as supervisors.

The Court reiterated its definition of "managers" as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." In light of the faculty's exercise of independent discretion and the expectation that they align themselves with management qua administration, the Court placed faculty in the managerial structure. The Court stressed the "controlling consideration" was the fact that "the faculty of Yeshiva University exercise authority which in any other context unquestionably would be managerial."

Although the Board had no absolute brightline criteria for managers, it did not argue that the decision making authority of the faculty was too insignificant to be considered managerial. Rather, the Board contended that apparent managerial decisions rendered by the faculty were not what they seemed; that is, the faculty were merely performing routine duties and, regardless, managerial status must be determined in the context of whether their decisions are in "alignment with management." Since the faculty were expected to assert "independent professional judgment," while neither "conform[ing] to management policies [nor being] judged according to their effectiveness in carrying out those policies," the Board maintained that faculty decisions were non-managerial and so not subject to the managerial exclusion.

The Court refused to accept the Board's notion that the exercise of independent judgment on the part of the faculty rendered their decisions non-managerial. The Court also rejected the contention that independent judgment on the part of the faculty is not coextensive with the best interests of the University, since there was no evidence below for such distinction. In fact, if the interests of the faculty and university are not one, the Court noted that the matter of divided loyalties might engender the very difficulties the Board sought to obviate. The faculty had "absolute" authority in academic governance and the predominant role in determining faculty hiring, tenure, and sabbaticals. Thus, the Court affirmed the ruling of the Second Circuit that the faculty at Yeshiva University "in effect, substantially and pervasively operate[e]" the university and, as managers, were not entitled to the protection of the NLRA.

Catholic Social Teaching on the Rights of All Workers

Incredibly, despite a century of unequivocal social teaching on the dignity and rights of all workers, including the rights to unionize and to bargain collectively with employers, some Catholic employers seemingly remain shamefully oblivious to the Church's labor theory. A synoptic overview of the Church's salient social message, reiterated especially well throughout the nineteen eighties by Pope John Paul II and the Bishops of the United States, is in order.

The emergence of the Industrial Revolution in the nineteenth century coupled with the rise of capitalism to produce profound social changes. The rapid industrialization of the workplace and the concomitant shift of agrarian populations to urban centers severely exacerbated the conditions of the poor and uneducated

17 440 U.S. at —.
urban working class. As frenzied concern for ever-increasing profits by unscrupulous employers further contributed to the economic oppression of workers, the Catholic Church eloquently spoke out on behalf of workers who were largely powerless to protect themselves.

On May 15, 1891, Pope Leo XIII promulgated Rerum Novarum, On the Condition of the Working Class, the first papal encyclical, teaching letter, through which the Papacy exercised its ordinary teaching authority to address the issue of economic justice for workers. This landmark encyclical recognized the spirit of revolutionary social and economic change in the world. From a different perspective than that of Marx, Pope Leo XIII eloquently demanded that long-standing human rights of workers and their families be protected. Workers have basic rights, including the right to just wages and safe working conditions, the benefit of the ownership of private property, and the right to organize. Although he recognized the symmetry and reciprocal reliance of labor and capital upon one another, workers as ends and as subjects had the higher priority than the means of nonhuman capital.

Pope Leo stated: "Associations of workers occupy first place . . . it is most clearly necessary that workers’ associations be adapted to meet the present need. It is gratifying that societies of this kind composed of workers alone or of workers and employers together are being formed everywhere, and it is truly to be desired that they grow in number and in active vigor." This was a powerful endorsement by Pope Leo of the right of workers to organize as a means of protecting their rights. Simultaneously, he sought to allay the fears of critics who erroneously perceived the existence of unions as antithetical to the social teachings of the Catholic Church.

Despite the strong statement of support afforded the rights of workers in Rerum Novarum, no significant changes in the lot of workers were immediately forthcoming, as management continued to maintain a dominant posture in labor relations. Rerum Novarum was a Magna Carta of sorts "on which all Christian activities in social matters are ultimately based." It set the tone for later Church teachings.

Pope Pius XI's Quadragesimo Anno, On Social Reconstruction (1931), and Pope John XXIII's Mater et Magistra, Mother and Teacher (1961), commemorating the fortieth and seventieth anniversaries of Rerum Novarum respectively, not only lavished praise upon Pope Leo's encyclical, but also strongly reaffirmed the Church's support for the rights of workers to organize freely for the purpose of collective bargaining.

The rights of workers were given additional support in Gaudium et Spes, The Pastoral Constitution on the Church in the Modern World, promulgated by Pope Paul VI and the Second Vatican Council on December 7, 1965. As important as papal encyclicals or teaching letters are, councilial documents carry even greater weight since they are formulated at General Councils of the Catholic Church and have the collegial support of the Pope and the Bishops of the world. The Vatican Council documents echoed earlier teachings when they proclaimed: "Among the basic rights of the human person must be counted the right of freely founding unions. These unions should be truly able to represent the workers and to contribute to the proper arrangement of economic life. Another such right is that of taking part freely in the activity of these unions without risk of reprisal."

For comprehensive explanation of the history, role, and importance of encyclicals, see A. Fremantle, The Papal Encyclicals in Their Historical Context (1956).

RERUM NOVARUM at 13.
POPE PIUS XI, QUADRAGESIMO ANNO (1931).
Gaudium et Spes at 277.
On May 15, 1981, Pope John Paul II commemorated the ninetieth anniversary of the issuance of Rerum Novarum in his encyclical Laborem Exercens, On Human Work. This 1981 encyclical is the most extensive elaboration of the Papacy’s insistence on the fundamental dignity and rights of workers and the subordination of the means of capital to the proper ends of human needs. Pope John Paul II expressly reaffirmed the importance of workers’ associations.

"Their task is to defend the existential interests of workers in all sectors in which their rights are concerned. The experience of history teaches that organizations of this type are an indispensable element of social life . . . Representatives of every profession can use them to ensure their own rights . . . They are indeed a mouthpiece for the struggle for social justice, for the just rights of working people in accordance with their individual professions."\(^\text{22}\)

Pope John Paul also acknowledged "the strike or work stoppage as a kind of ultimatum to the competent bodies, especially the employers. This method is recognized by Catholic social teachings as legitimate in the proper conditions and within just limits." Yet, while "a strike remains, in a sense, an extreme means," he qualified this right by noting that "it must not be abused especially for ‘political’ purposes." In this way he sought to maintain a balance between the legitimate right of workers to strike over economic injustices and the potential abuse of this right for ulterior reasons.

The most recent papal encyclical to address the rights of workers is Sollicitudo Rei Socialis, On Social Concern, promulgated by Pope John Paul II on December 30, 1987, to commemorate the twentieth anniversary of Populorum Progressio, On the Development of Peoples, the major social encyclical of Pope Paul VI which dealt with economic development. The primary thrust of On Social Concern is economic and social development, further recognizing the legitimate place unions occupy in seeking to achieve these twin goals:

"We should add here that in today’s world there are many other forms of poverty. For are there not certain privations or deprivations which deserve this name? The denial or the limitation of human rights, [for example] . . . ‘the freedom to organize and to form unions’, or to take initiatives in economic matters, do these not impoverish the human person as much as, if not more than, the deprivation of material goods?"\(^\text{23}\)

The rights of workers to organize was most recently reaffirmed by Pope John Paul II while speaking in Meleo, Uruguay, on May 8, 1988. He offered his support of union organizers by saying they "deserve unconditional support and encouragement," and, in more emphatic terms, he added that "with my words and with my heart I am also very close to those who dedicate themselves to union activities."\(^\text{24}\)

Church teachings, especially those of Pope Leo XIII, were primarily motivated by concern for the plight of industrial workers. However, subsequent pronouncements have consistently recognized and supported the right of all workers and in every profession to unionize and bargain collectively since they all share in the human enterprise. Yet for decades there had been a conspicuous absence of any specific reference to the rights of workers in Church related institutions. This void was addressed and filled clearly and unequivocally by the United States National Conference of Catholic Bishops on November 18, 1986. In Economic Justice For All, their pastoral letter on Catholic social teaching and the American
economy, the Bishops succinctly advocated:

“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 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.”

Thus, the same rights that were historically advocated for all workers were applied with specificity to those working in Church related institutions.

Over the past century, the teachings of the Catholic Church concerning the rights of workers to organize and to bargain collectively have become ever more clear and emphatic. Beginning with Rerum Novarum and continuing through the present, these teachings emphasize three fundamental principles. First, all people enjoy the right of free association, a right founded in natural law jurisprudence, which is not contingent upon the church, state, or society. Second, workers in free association have the right to bargain collectively with their employers for just compensation and working conditions. Third, workers have the right to determine for themselves the agency or organization they wish to represent them. These social teachings are also incorporated into the Church’s Code of Canon Law.

The 1983 Code “explicitly takes over the social teaching of the Church on the formation of associations and applies it internally to the Church,” as it echoes recent Papal Encyclicals: “Christ’s faithful may freely establish and direct associations which serve charitable or pious purposes or which foster the Christian vocation to the world, and they may hold meetings to pursue these purposes by common effort.”

Moreover, the Code makes no mention of any prior approvals of Church authorities before employees may organize and Church authorities will not intervene in such an association unless it wishes to use the term “Catholic” in its title or it wishes to be officially recognized by the Church. In effect, then, the Magisterium recognizes the rights of Church employees to organize and bargain collectively.

Consequences

In Catholic higher education employment environments, the university employer choice between invoking the mutually exclusive Yeshiva decision or fully implementing Catholic labor theory is clear. The latter is the only viable policy for Catholic employers.

The Papal encyclicals, the Bishops’ letters, the related Church documents, and the Code of Canon Law are all squarely grounded in the natural law tradition and thus repudiate the crabbed and truncated positivism of contrary secular law.

In light of the Church’s unequivocal social teaching, which has become especially prominent in the decade post-

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25 ECONOMIC JUSTICE at 176.


27 CANON LAW SOCIETY OF AMERICA, CANONICAL STANDARDS IN LABOR-MANAGEMENT RELATIONS; A REPORT, 15 (1987).

28 1983 CODE c.215. The similarity between the Code and Papal Encyclicals is strikingly clear when compared with statements such as Pope John XXIII’s in PACEM IN TERRIS n.23 (1963): “From the fact that human beings are by nature social, there arises the right of assembly and association. They have also the right to give the societies of which they are members the form they consider most suitable for the aim they have in view, and to act within such societies on their own initiative and on their own responsibility in order to achieve their desired objectives.”

29 1983 CODE c.300: “No private association may call itself ‘catholic’ except with the consent of the competent ecclesiastical authority, in accordance with can.” 312.

30 1983 CODE c.299 sec. 3: “No private association of Christ’s faithful is recognized in the Church unless its statutes have been reviewed by the competent authority.”

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Yeshiva, no Catholic employer can continue to plead ignorance. The recalcitrant Catholic employer who continues nevertheless to invoke pernicious secular law to avoid its obligations to its workers may commit serious structural social sin. Until it repents and disavows sin and fully implements Catholic labor theory, sinful Catholic employers ostracize themselves.

Catholic higher educational institutions, as employers, are especially disabled from invoking the Yeshiva decision. Given the Bishops' express instruction in 1986 to Catholic universities to implement the Church's social teaching, the Yeshiva decision must immediately become a dead letter.

Catholic labor theory studies the world of work in all of its universal catholic dimensions. From the integrated perspective of Catholic social teaching, workers cannot be artificially trifurcated into "supervisors" and "managers" and "employees" for the purpose of denigrating their core rights as workers qua workers to unionize and to bargain collectively. From the perspective of Catholic labor theory, all who work are workers, without regard to secular labor law's artificial class-based trifurcations of the world of work. This is not to say that the Church's teaching denigrates or has contempt for the secular law, by no means. However, when secular law's narrow positivism is counterproductive to natural law and to human dignity, it must necessarily yield to the superior natural law of the Church's teaching. When Catholic educational institutions fully implement the Church's social teaching on the rights of workers, the evil effects of the Yeshiva case will be properly expunged from one major segment of the world of work in the United States.

Unfortunately, several Catholic educational institutions, as employers, have not implemented the Church's teaching and have used the Yeshiva decision to counter the collective bargaining aspirations of faculty. This is simply not an option for Catholic employers. The papal encyclicals, council documents, bishops' pastoral letters, and Canon law are the informed authority of the Church. Consequently, they must be taken very seriously and in a spirit of intelligent reflection and faithful docility by all Catholics. This surely includes all Catholic institutional employers. Catholics are not cavalierly free to pick and choose which magisterial teachings to implement and which to disregard.

The continued deliberate and flagrant reliance upon the Yeshiva case law, so diametrically opposed to the Church's social teaching, is profoundly wrong. It must cease, not primarily through the counteruse or reform of secular law, but rather through the faithful witness and moral suasion the community of enlightened Catholic employers, unions, and workers must jointly bring to bear upon those employers who continue to disregard the Church's teaching. If Catholic labor theory is to one day transform the world of work, that process of redemption from alienation must begin within the Church's own institutional employment settings. When this transformation is underway, other narrow positivist case law counter-demand an assent without reservations and make a formal act of faith obligatory." However, the authority of the encyclicals is undoubtedly great: "It is, in a sense, sovereign. It is the teaching of the supreme pastor and teacher of the Church. Hence the faithful have a strict obligation to receive this teaching with infinite respect, A man must not be content simply not to contradict it openly . . . an internal mental assent is demanded. It should be received as the teaching of the sovereign authority within the Church." A. Fremantle, THE PAPAL ENCYCLICALS IN THEIR HISTORICAL CONTEXT (1956).

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productive to the rights of workers will also be neutralized by applied natural law in Catholic employment settings. For example, related decisions such as *NLRB v. Catholic Bishop of Chicago* should likewise become quickly irrelevant in Catholic employment environments. In light of the Church’s unequivocal and powerful labor theory, it is simply morally preposterous that any Catholic employer continue to raise First Amendment or constitutional preemption claims in order to avoid collective bargaining with its workers, if and when the majority of the workers wish to unionize.

**Conclusion**

Catholic employers must throw off the shackles of positivist jurisprudence. They must translate Catholic social teaching and preaching into practice. If they refuse to do so, they ostracize themselves by their serious structural sin. The Catholic workplace must stand as a transformative example of hope and of dignity. The best means for effecting this transformation of the world of work is Catholic labor theory. The transformative process must begin willingly through the example of enlightened Catholic employers recognizing the rights of workers and unions, including productive collective bargaining. The Pope expressly extended the rights of labor to “every profession”, this has been supplemented by the Bishops’ command that “all Church institutions... fully recognize the rights of employees to organize and bargain collectively.”

If the majority of workers wish to organize, *Yeshiva* cannot obstruct workers’ collective aspirations in Catholic higher education employment settings. Nor need the employers necessarily fear a resumption of bitter and acrimonious adversarial labor relations. Indeed, the

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33 440 U.S. 490 (1979). After a conflict of more than five years over the rights of teachers in Roman Catholic schools to organize and bargain collectively, two of the largest and most powerful organizations in the United States, the Roman Catholic Church and organized labor, found themselves on opposite sides of the dispute that culminated before the United States Supreme Court. This case of first impression raised the issue of whether the NLRB had the authority to assert jurisdiction over teachers in church-operated schools and, if it did, whether such an action violated the constitutionally sensitive questions arising out of the First Amendment religion clauses. In a five-to-four ruling the Court held that since the NLRB lacked the statutory authority to rule in such a dispute, it was unnecessary to address the merits of the thorny First Amendment questions of free exercise of religion and separation of church and state. Regarding *Catholic Bishop of Chicago*, the prestigious Canon Law Society of America stated that "the legal future of such a precedent is dubious, especially if the Church as an institution were to fail to provide alternate and adequate avenues of recourse to its employees in labor disputes." See *Canonical Standards In Labor-Management Relations: A Report at 18* (1986). For a review of the status of collective bargaining in Roman Catholic secondary schools in light of *Catholic Bishop*, see Russo, "NLRB v. Catholic Bishop of Chicago: Collective Bargaining in Roman Catholic Secondary Schools Ten Years Later," *Education Law Reporter* (forthcoming, 1989). For a comprehensive treatment of the history of collective bargaining in Roman Catholic secondary schools, see Russo, "Attitudes Towards Collective Bargaining in Roman Catholic Secondary Schools in New York State", Doctoral dissertation, St. John’s University, 1988 (available from University Microfilm, Number DA8902062).

34 But see *Catholic High School Association of the Archdiocese of New York v. Culvert*, 753 F.2d. 1161 (2nd. Cir. 1985). The Second Circuit held the First Amendment did not preempt the state labor law. Therefore, the New York State Labor Board could assert jurisdiction in a conflict between the Archdiocese and its lay teachers. The Second Circuit distinguished *Catholic Bishop* on the ground that, unlike the NLRA, which evidenced no intent to bring church-operated schools within the jurisdiction of the NLRB, the New York Labor Relations Act was amended explicitly in 1968 to bring employees of educational or religious associations within its purview. Thus the federal court of appeals upheld the authority of the New York State Labor Board to retain its jurisdiction in this dispute. See also *Christ the King Regional High School v. Culvert*, 815 F. 2d 219 (2nd Cir. 1987). For a general discussion of *Catholic Bishop of Chicago* and its progeny, see, for example, *Bradley, A New Approach to NLRB Jurisdiction over the Employment Practices of Religious Institutions*, 54 U. Chi. L. Rev. 243 (1987); *Miller, Constitutional Law—Government Agency Jurisdiction Over Church Operated University and the Establishment and Free Exercise Clauses*, 60 Temple L.Q., 189 (1987); Simonetti, The Constitutionality of State Labor Relations Board Jurisdiction over Parochial Schools: *Catholic High School Association v. Culvert*, 30 Cath. Lawyer 160 (1986); Note, Church Affiliated Universities and Labor Board Jurisdiction: An Unholy Union Between Church and State? 56 Geo. Wash. L. Rev. 558 (1988); Comment, Jurisdiction Over Religious Colleges And Universities—The Need For Substantive Constitutional Analysis, 62 Notre Dame L. Rev. 255 (1987); Note, Labor Relations Board Regulation of Parochial Schools: A Practical Free Exercise Accommodation, 97 Yale L.J. 135 (1987).

35 See note 22, supra.

36 See note 25, supra.
Bishops urge both workers and employers to implement labor management relations of mutual respect. “In light of new creative models of collaboration between labor and management . . . we challenge our church institutions to adopt new fruitful modes of cooperation.”37 All Catholic employers and workers must accept the challenge of the Church’s social teaching. Catholic employers must courageously begin to practice what the Church has so eloquently preached. Only then can Catholic labor theory begin to fulfill its promise to transform the entire world of work.38

State Prosecution Was Not Preempted by OSHA

The U.S. Supreme Court declined to review a ruling by the Illinois Supreme Court that state criminal prosecution based on workplace conditions was not preempted by the federal OSH Act (Illinois v. Chicago Magnet Wire Corp., 1989 OSHD ¶ 28,421). The company and five of its officers were charged by the state with multiple counts of aggravated battery for allegedly exposing workers to poisonous OSHA-regulated substances and for failing to provide safety instructions, safety equipment, or health monitoring systems. The state supreme court held that the criminal charges did not set new workplace safety standards but rather imposed additional sanctions for an employer’s conduct if the requisite willful mental state could be proven. Although such action might implicitly aid enforcement of federal safety standards, the state court concluded that it did not necessarily follow that Congress intended to preempt the enforcement of state criminal laws in such cases. Criminal law regulates society in general, while OSHA standards apply only to specific hazards in the workplace, the court pointed out. The state court rejected the argument that imposing criminal liability regardless of compliance with OSHA standards would lead to piecemeal and inconsistent prosecution and eliminate the uniformity of standards that Congress considered vital for ensuring stable employment relations.

37 See note 29, supra.
38 Among the major practical affirmative consequences of neutralizing the Yeshiva doctrine will be the collective strengthening of all professional workers. Professional employees are protected by the NLRA, but only if they are not supervisors or managers. With the spread of Yeshiva’s influence in the nineteen eighties, successful unionization of professionals became virtually nonexistent. Yet, concomitantly, professionals are the fastest growing sector of the workforce, increasing at twice the rate of the general labor force. By the turn of the century, professional workers will be the largest single segment of the workforce. See D. Bell, THE COMING OF POST-INDUSTRIAL SOCIETY; A. Gouldner, THE FUTURE OF INTELLECTUALS AND THE RISE OF THE NEW CLASS; Andel, Professionals and Unionization, 66 Minn. L. Rev. 383 (1982).