

Are Your Employees Religious Enough For The NLRB?

August 31, 2015 | [Employment Discrimination, Labor And Employment](#)



**Mark D.
Scudder**
Of Counsel

The NLRB is at the center of the most recent battle over religious freedom. At issue is the religious character of faculty at religious colleges and universities. Since the U.S. Supreme Court's ruling in *NLRB v. Catholic Bishop of Chicago*, the board has been barred from regulating employees in religious educational institutions. However, in recent years, the board has tried to narrow the reach of the *Catholic Bishop of Chicago* case by arguing that it only applied to institutions of a "substantial religious character." When colleges and universities responded that the Constitution barred the board from determining an institution's religious character, the board instead focused on whether individual faculty members have a religious function. In recent weeks, the NLRB has held that faculty members at two Catholic institutions—Seattle University and Manhattan College—were subject to the board's jurisdiction because the faculty did not perform a specific role in creating or maintaining a religious educational environment. In the Manhattan College case, the board noted that the faculty did not serve as religious advisors, did not engage in religious training, were not responsible for propagating the faith, nor were they required to conform to the tenets of the faith. The only religious requirements placed on faculty members were to sign a statement that they had read the institution's religious mission statement and agree to respect its culture. While these institutions indicate that they will continue to fight these rulings, other religious institutions should take note that the NLRB is interested in expanding its jurisdiction in this area. Institutions wishing to remain outside the board's jurisdiction should make sure that their employees are truly a part of their religious mission and not merely religious in name only.

RELATED PRACTICE AREAS

Arbitration and Grievances
EEO Compliance
Labor and Employment
Workplace Culture 2.0

RELATED TOPICS

National Labor Relations Board (NLRB)
religious freedom