



D.C. Circuit Rebukes NLRB's Power Grab Over Religious Universities

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The National Labor Relations Board generally has the power to enforce labor laws against private employers that meet certain benchmarks of revenue and involvement in interstate commerce. However, the Board *does not* have jurisdiction over religious institutions, including churches and educational institutions.

For decades, the NLRB has ignored this rule and attempted to broaden its power over religious schools, arguing they are different (less religious) than churches. This reasoning was rejected by the Supreme Court and several other courts, including the U.S. Court of Appeals for the D.C. Circuit.

In fact, the D.C. Circuit set forth the following three-part test in 2002: the NLRB cannot assert jurisdiction over any school or university that holds itself out as a religious institution, is a nonprofit, and is religiously affiliated.

Fast forward to 2012, when faculty at Duquesne University voted to form a union. The university resisted those attempts and argued the NLRB did not have jurisdiction over it because it was a Catholic-affiliated nonprofit university. The Board relied on new [Obama-era precedent](#) to exercise jurisdiction over faculty members not “playing a specific role in the school’s religious educational environment.” This led the Board to remove faculty teaching theology from the unit, but certifying the unit of other faculty and ordering the university to bargain.

Last week, the D.C. Circuit [checked](#) the NLRB’s continued attempt at broadening its power. The court found that it was undisputed that the university met the three-factor D.C. Circuit test, and that the Obama-era Board’s rule delving into what role employees play in the school’s religious mission “impermissibly intrudes into religious matters.”

The court’s ruling is a succinct rebuke and a reminder that the NLRB does

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