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Washington — January 30, 2020

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A Jan. 28 decision by the U.S. Court of Appeals in Washington said the National Labor Relations Board could not order a Pittsburgh Catholic university to approve an adjunct faculty union.

The 2-1 decision reversed a previous ruling by the NLRB ordering Duquesne University to bargain with the faculty group.

In 2018, a three-member NLRB panel sided with the agency's regional office which said in 2017 that the university had to recognize and bargain with the union. The university challenged the decision with the federal appeals court, arguing that the university's religious affiliation removed it from the NLRB's jurisdiction.

Before the appeals court in December 2018, the university argued that the National Labor Relations Act, when read in light of the religious freedom clause of the First

Amendment, did not authorize the labor board to exercise jurisdiction in this matter.

The court's decision, written by Circuit Judge Thomas Griffith, agreed with the university.

"This is no business of the state," the court said.

The ruling said the NLRB's order went against a 1979 Supreme Court decision in NLRB v. Catholic Bishop of Chicago, which rejected the labor group's attempt to expand its reach to include religious institutions, stressing that problems can arise when a government office tries to determine if certain activities are religious or not.

The appeals court also said NLRB's attempt to put a religious institution such as Duquesne under its jurisdiction would lead to "the sort of intrusive inquiry" the Supreme Court warned against, saying the labor board could end up "trolling through the beliefs of the university" to make determinations about its religious mission and if certain faculty members contribute to that mission.

The Association of Catholic Colleges and Universities, which submitted a friend-of-the-court brief in this case, applauded the decision in Duquesne University of the Holy Spirit v. National Labor Relations Board.

"For us, this has always been a case about how the government decides to recognize our designation as faith-based institutions," the association said in a statement.

The association's president, Vincentian Father Dennis Holtschneider, told Catholic News Service Jan. 29 that although the case started as a union issue, it became something much bigger.

He said the association did not take a position on unions, which he noted that many Catholic colleges have. What was at stake in this years-long battle, he said, was government agencies determining what part of a group is Catholic. "The government can't substitute its judgment for ours as to what's religious," he said.

The concern here is broader, he added, noting that if a government agency can do tell a Catholic college what to do, they might also do the same for a Catholic health group or social service agency.

The case before the appeals court began in 2012 when some of the adjunct faculty members at Duquesne University sought to unionize. The United Steel, Paper and Forestry, Rubber, Manufacturing, Allied-Industrial and Service Workers International Union and AFL-CIO-CLC petitioned the NLRB to certify it as the exclusive bargaining representative for the adjunct faculty at the university.

As a part of the NLRB's decision that the school should support the union, it said theology faculty members should be excluded.

Duquesne University spokesman Gabriel Welsch said the university is pleased with the appeals court ruling, which reflects the culmination of an eight-year legal challenge over the NLRB's assertion of jurisdiction over Duquesne.

"The university is grateful that the court recognized the importance of our religious mission in rendering this significant decision. The Constitution's First Amendment protection of religious freedom from government intrusion and regulation is one of America's most important rights, and we are pleased that the court upheld the religious rights of Duquesne," he said in a statement.

Welsch said the university's president, Ken Gormley, "has consistently emphasized that adjunct faculty members are extremely important members of the university community" and now with the "question of NLRB jurisdiction" resolved, Gormley is "committed to taking a fresh look at how the university engages with its adjunct faculty."

He added that the university has a "deep respect and appreciation for unions," noting that four different unions represent several hundred nonfaculty employees on campus.

Holtschneider, reiterating that many Catholic colleges and universities have unions, added that to support a union or not is a question "for each campus to sort out, not for a government office to come in and say: 'Do it this way.'"

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