

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

ISLAMIC SAUDI ACADEMY  
Employer  
and

05-RC-080474

ISLAMIC SAUDI ACADEMY EMPLOYEE  
PROFESSIONAL ASSOCIATION (ISAEPa)  
Petitioner

**SUPPLEMENTAL DECISION**

The above-captioned matter is before me on remand from the National Labor Relations Board (the Board). On June 14, 2012, the then-Regional Director of Region 5 issued a Decision and Direction of Election in this matter. In that decision, the then-Regional Director determined, *inter alia*, that Islamic Saudi Academy (hereinafter “the Employer”) is a religious school within the meaning of *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979) and *Jewish Day School of Greater Washington*, 283 NLRB 757 (1987), and that, consequently, the Board should not assert jurisdiction over the teachers in the petitioned-for bargaining unit. However, the then-Regional Director also determined that it was appropriate to assert jurisdiction over the non-teacher employees. Thereafter, in August 2012, the Board issued an Order granting the parties’ Requests for Review of that Decision solely regarding whether the Board has jurisdiction over the petitioned-for teacher and non-teacher employees of the Employer. Pursuant to the Decision and Direction of Election and the Board’s granting the parties Request for Review of that decision, an election was conducted on September 13, 2012, and the ballots were impounded.

On December 16, 2014, the Board issued its decision in *Pacific Lutheran University*, 361 NLRB No. 157, which, *inter alia*, revised the Board’s standard for determining when it should decline to exercise jurisdiction over faculty members at self-identified religious academic institutions. On February 26, 2015, the Board vacated its August 2012 order in this case following the U.S. Supreme Court’s decision in *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014), holding that certain challenged appointments to the Board—one of whom participated in the August 2012 order—were not valid. The Board’s February 2015 order remanded to me the question whether the Board has jurisdiction over the petitioned-for teacher and non-teacher employees for further appropriate action consistent with its decision in *Pacific Lutheran University*.<sup>1</sup>

---

<sup>1</sup> The since-vacated August 2012 order denied review on the issue of whether the Board lacks jurisdiction over the Employer because it is an instrumentality of a foreign government under the Foreign Sovereign Immunities Act

Subsequently, I provided the opportunity for the parties to introduce additional evidence into the record in light of *Pacific Lutheran University*, and the record was re-opened at a supplemental hearing on April 29, 2015. Both parties were afforded a full opportunity to be heard, to present evidence, to examine and cross-examine witnesses, and to provide arguments. Both parties were given the opportunity to file briefs, and the Employer filed a brief.

Therefore, upon the entire record in this proceeding, the parties' respective positions, and the Employer's arguments in its brief, I make the following findings and conclusions.<sup>2</sup> As discussed below, I conclude that (1) the Board should decline jurisdiction over the petitioned-for teachers, but (2) the Board may properly assert jurisdiction over all petitioned-for non-teaching employees.

### **I. Summary**

The Employer, a non-profit private educational institution, operates an elementary and secondary school at two locations in Fairfax County, Virginia. The Islamic Saudi Academy Employee Professional Association (ISAEPA) (hereinafter "the Petitioner") seeks to represent employees in the following unit:

All full-time and regular part-time employees employed by the Employer, but excluding all bus driver managers; maintenance managers; vehicle maintenance foremen; temporary health employees; English as a second language temporary

---

(FSIA). The Board's February 2015 order, however, severed and retained that issue for further consideration. Accordingly, this decision will not address that issue.

<sup>2</sup> As stated in the previous Decision and Direction of Election in this matter, and upon the entire record in this proceeding, I find that:

- a. The hearing officer's rulings made at the hearings are free from prejudicial error and are hereby affirmed.
- b. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case to the extent specified herein.
- c. The parties stipulated that the Petitioner is a labor organization as defined in Section 2(5) of the Act, and claims to represent certain employees of the Employer.
- d. A question affecting commerce does exist concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
- e. The Employer is an instrumentality of the Kingdom of Saudi Arabia, and a non-profit private educational institution with its principal place of business in Fairfax County, Virginia. During the past 12 months, in conducting its operations described herein, the Employer derived gross revenues available for operating expenses in excess of one million dollars. In conducting the operations described herein during the period described above, the Employer purchased and received at its Alexandria, Virginia facility products, goods, and materials valued in excess of \$5,000 directly from points outside the Commonwealth of Virginia.

teachers, also known as ESL temporary teachers; physical education temporary teachers, also known as PE temporary teachers; controllers; elementary coordinators; West Campus coordinators; assistant principals; vice principals; principals; directors of education; personnel managers; business managers; finance officers; transportation managers; directors general; acting directors general; executive assistants; managerial employees; guards; and supervisors as defined by the Act.<sup>3</sup>

As of the time of the first hearing in this matter in 2012 there were approximately 125 employees in the petitioned-for unit, which the prior Regional Director determined was essentially a facility-wide unit, and thus a presumptively appropriate bargaining unit. See DDE at 27. Further, the Petitioner is willing to proceed to an election in any unit I determine to be appropriate.

## **II. Record Evidence**

The Employer was established in 1984 by the Saudi Arabian embassy. The Academy operates from two locations in Fairfax County, Virginia. The West Campus location services the Employer's kindergarten and 1<sup>st</sup> grade classes, while the main facility contains grades 2-12. At the main facility, the Employer operates separate boys' and girls' schools, with each having its own principal and assistant principal. The main facility has a mosque, or prayer room, which is used for mandatory afternoon prayer. The building also contains other rooms customarily found in a school, including a library, gymnasium and offices.

The Employer's charter states that the school is established pursuant to the Kingdom of Saudi Arabia's "Islamic responsibilities as custodian of Islam's two most holy mosques...and its unswerving commitment and policy to further Islamic education and development of its young people." The charter further states that the Employer's "exclusive purpose" is to "provide instruction in Islamic Religion, Studies and Practices," among other subjects.<sup>4</sup> The Employer's bylaws largely deal the Employer's governance, and there is no mention of religion in the bylaws. Similarly, the Employer's bylaws do not address the roles of faculty and non-faculty employees.

The Employer publishes its mission statement on its website, as well as in its employee handbook and parent/student handbook.<sup>5</sup> The Employer's stated mission is to enable students to

---

<sup>3</sup> The parties stipulated that the following classifications in the proposed unit are professional employees: department heads, guidance counselors, boys high school counselors, nurses, IT employees, also known as information technology employees, computer specialists, librarians, assistant librarians, finance accountants, internal auditors, finance clerks, teachers, transportation accountants, and finance employees. See DDE at 1-2, and fn. 1.

<sup>4</sup> See ER Ex. 10, p. 1.

<sup>5</sup> All employees receive an employee handbook upon their initial hire. Additionally, employees receive notice of changes to employee handbook provisions. Students and parents of new students receive the parent/student handbook upon enrollment.

“excel academically while maintaining the values Islam...”<sup>6</sup> Under the “Vision” tab on its public website and “Beliefs” heading in its handbooks, the Employer states that it seeks to “[c]reate opportunities for [its] students to embrace, internalize, and practice the moral values established in the Holy Quran and the exemplary life of our Prophet Muhammad.”

The Employer’s operations manual includes a statement that the Employer promotes the five pillars of Islam, and formally adheres to and practices the principles of Islam. The Employer maintains a copy of its operations manual in the principal’s offices of its boys’ and girls’ schools, in the library, and in personnel manager Nadia Yousef’s office. Employees are not provided with a copy of the operations manual, but the manual is made available to employees upon request. There is no record evidence indicating that the operations manual is published for public viewing. The Employer’s mission statement, philosophy, and goals and objectives sections of the operations manual make several references to the Employer’s goals of instilling Islamic values in its students.

The Employer makes available informational brochures to its visitors, and the Employer also publishes an annual magazine. The informational brochure reiterates the Employer’s goal to create opportunities for students to embrace, internalize and practice the values established in the Quran and the life of the Prophet Muhammad. The Employer’s magazine includes stories referencing religion and Islam. For example, a 2013 edition references a school “Quran Contest” and notes the observance of Muslim holidays. The Employer also maintains a Facebook page. This Facebook page is “public” and, thus, may be accessed by any Facebook user. The Employer submitted evidence that it has, on at least one occasion, posted pictures on its Facebook page of students and faculty praying together.

The Employer has divisions for finance, personnel, admissions, transportation, cafeteria/food service, maintenance, technology, and education. The Employer’s education division, which includes the petitioned-for teachers, is led by the Director of Education. This division contains eight departments, each with its own department head who also serves as a teacher. The departments are: Islamic Studies; Arabic Studies; English; Science; Mathematics; Social Studies; Physical Education; and Art.

The Employer participates in the International Baccalaureate (IB) program, a set curriculum from which the Employer may not deviate. The curriculum applies to 11th and 12th grade students, as well as students in grades 6-10 as part of the IB’s Middle Years Program. The IB program is non-religious and does not maintain a position on religion. As of the 2012 hearing in this matter, approximately 97-98% of eligible students participated in the IB program.

---

<sup>6</sup> See ER Ex. 2, p. 6.

The Employer's students are enrolled in a number of secular subjects, some teachings of which are influenced by Islamic tenets. For instance, art teachers do not permit students to draw the naked human form because it is prohibited by Islam. Further, in biology class, the curriculum mandates that the class discuss Islam's objections to in vitro fertilization and stem cell research. Additionally, teachers will sometimes raise the work of Muslim scholars in their subject.

The Employer's students take classes in Islamic Studies from kindergarten through 12th grade. This class is mandatory, with no exceptions. As the name suggests, and the curriculum demonstrates, this subject is inherently religious in nature. The class is taught in Arabic, the language of the Holy Quran. Generally, students learn the Holy Quran's teachings and the life and teachings of the Prophet Muhammad, a religious figure. Additionally, Islamic Studies faculty lead students and teachers in prayer.

Teachers are not required to accept the Islamic faith as a condition precedent to employment with the Employer. Nor are teachers required to practice Islam after their hire. However, the Employer requires Islamic Studies teachers to be Muslim. Further, though not required, the Employer prefers that teachers be certified in the Commonwealth of Virginia. Teachers' employment contracts are governed by Virginia law.

The Employer maintains a dress code for all employees. Consistent with "Islamic customs and professional traditions," the Employer's employee handbook states that employees are expected to dress modestly. Non-Muslim teachers are not required to wear Muslim attire. In 2012, then-Director of Education Rahima Abdullah testified that the dress code simply reflects professionalism.

All employees execute a one-year employment agreement for each school year. The employment agreements are identical, save for differing job titles, class/grade, and compensation. The agreement references the Employer's operations manual and employee handbook, and states that "because the [Employer] is an Islamic school, some of the responsibilities...will differ from non-sectarian schools." No specific details concerning these differing responsibilities are set forth in the employment agreement.

Prior to the beginning of the school year, the Employer holds an orientation session for new faculty.<sup>7</sup> The new-hire orientation includes a one-hour session concerning Islamic culture at the Employer's facility. The session is led by the chair of the Islamic Studies department, Dr.

---

<sup>7</sup> Director of Education Phillip Evans testified that while an orientation session exclusively for new faculty was not implemented until prior to the 2014-15 school year, Dr. Abdulrahman made a nearly identical presentation to the previous orientation sessions that included both returning faculty and new faculty hires.

Dawood Abdulrahman. During this session, new hires receive directives concerning teaching in an Islamic environment at the Employer.<sup>8</sup> Discussion points included:

- Stories, pictures, and activities focusing on pigs, magic, or witches are not appropriate and not to be used.
- Teachers are to refrain from encouraging celebration of non-Muslim holidays such as Halloween, Thanksgiving, and Christmas.
- If teachers must use food incentives in the classroom, the food must not contain pork derivatives such as glycerin, gelatin, and animal shortening, among other products, which are considered non-halal.
- For certain grades, teachers must allow time at the end of sixth period for students to wash for prayer.

In addition to these directives conveyed at the new teacher orientation, non-Muslim teachers are directed to respect Muslim culture and practices. For example, non-Muslim teachers should avoid bringing in non-halal food. While not required to fast during the month of Ramadan, non-Muslim teachers are not to eat in front of Muslim teachers and students. Nor are non-Muslim teachers permitted to discuss their consumption of alcohol, a practice forbidden by Islam.

Teachers are subject to discipline and/or criticism for exposing students to opinions or beliefs deemed critical of Islam. For example, a social studies teacher was suspended for showing 8th graders a video blaming the September 11, 2001, attacks on the United States on Muhammad, and associating Islam with terror. Moreover, while serving as an English literature teacher, now-Director of Education Phillip Evans was directed to remove a novel from his syllabus because the novel included inappropriate subject matter for an Islamic environment. The following school year, the novel was removed from Evans' syllabus and replaced by a different novel.

The record contains relatively limited evidence concerning non-faculty employees. The Employer presented evidence that its school bus drivers are tasked with keeping boys and girls separated on bus trips. Further, the Employer maintains a halal kitchen. The job description for an assistant cafeteria manager states that this position must research food product origins and

---

<sup>8</sup> To the extent it could be argued that department chairs are not supervisors or agents of the Employer, and, thus, Dr. Abdulrahman's statements cannot be imputed to the Employer, the record indicates that Dr. Abdulrahman is appointed by the Employer to present this material, the presentation has been observed by the Employer's supervisors, management, and agents, the material has been effectively ratified by the Employer, and it appears that Dr. Abdulrahman has been vested with both actual and apparent authority to speak on the Employer's behalf concerning the religious educational environment at the Employer's school.

ingredients for contents that may not satisfy the Islamic dietary code.<sup>9</sup> Additionally, the assistant cafeteria manager must be “sensitive to Islamic eating customs and traditions.”

### III. Analysis

#### a. Applicable Legal Standard

The Board will not decline to exercise jurisdiction over a unit of faculty members at a school claiming to be a religious institution unless the school demonstrates that it: (1) holds itself out as providing a religious educational environment, and (2) holds out the petitioned-for faculty members as performing a specific role in creating or maintaining the school’s religious educational environment. *Pacific Lutheran Univ.*, 361 NLRB slip op. at 1, 5 (2014).<sup>10</sup>

As a threshold requirement, a school must hold itself out as providing a religious educational environment. The Board requires only a “minimal showing at this stage, when the Board is determining not whether it has the authority to assert jurisdiction, but whether First Amendment concerns are even potentially implicated with respect to the petitioned-for unit.” *Id.* at 7. If the school meets this threshold showing, it then bears the burden of establishing that it holds out petitioned-for faculty members as performing a religious function. *Id.* at 1. This requires a showing by the school that it holds out those faculty as performing a specific role in creating or maintaining the school’s religious educational environment. *Id.* at 7. The focus of this inquiry is on the faculty members themselves, rather than on the institution itself. *Id.*

#### b. The Employer holds itself out as providing a religious educational environment.

This initial burden does not require a rigorous showing of the Employer’s religious character. See *Id.* at 13 (discussion of university’s religious heritage, stated support of Lutheran religious community, and listed opportunities for students to “grow their faith” sufficient to meet threshold requirement). Indeed, the Board requires merely a “minimal showing at this stage.” *Id.* at 7. When considering this threshold requirement, the Board reviews, among other evidence, employer handbooks, mission statements, corporate documents, course catalogs, and documents published on the school’s website. Press releases and other public statements will be relevant to

---

<sup>9</sup> Though not dispositive of the issue, the assistant cafeteria manager job descriptions also lists “supervis[ing] food service staff” and “[s]erv[ing] as manager of the cafeteria” when the cafeteria manager is not present. See ER Ex. K. On this record, it is unclear whether this job description would be included in the petitioned-for unit.

<sup>10</sup> Although the text of *Pacific Lutheran University* speaks in terms of colleges, universities, and institutes of higher learning, the Board’s remand suggests that its test is to be applied to schools such as the Employer, with its grade school and high school.

this inquiry, as well. Further, while not dispositive of this question, proof of non-profit status may be relevant in examining how a school holds itself out. *Id.* at 6-7.

In the instant case, I find that the Employer met its threshold burden of establishing that it holds itself out as providing a religious educational environment. In doing so, I rely on the ample record evidence indicating the Employer's representations of its goals of providing its students with an academic experience in line with the Islamic religion. The Employer's charter states that the school was created pursuant to the Kingdom of Saudi Arabia's "unswerving commitment and policy to further Islamic understanding and the religious education...of its young people." The charter further states that the Employer's exclusive purpose is to provide instruction in, among other areas, Islamic religion, studies and practices. Similarly, the Employer's mission statement declares that the Employer is committed to providing an educational environment that "maintain[s] the values of Islam." This mission statement is displayed on the Employer's public website, as well as in its employee handbook and parent/student handbook. Further, the Employer's informational brochure states that the Employer provides opportunities for students to embrace, practice, and internalize moral values taught by the Holy Quran and the Prophet Muhammad. Likewise, an issue of the Employer's annual magazine describes a "Quran contest," and notes the Employer's observance of Muslim holidays. Moreover, the Employer prominently displayed photos of students and faculty praying on its public Facebook page, which is accessible to all Facebook users. Finally, the Employer is organized as a non-profit private educational institution.

Based on the evidence discussed above, I find that the Employer has established that it holds itself out as providing a religious educational environment. Accordingly, First Amendment concerns surrounding the Board's jurisdiction are raised, and I must next determine whether the Employer holds out its teaching and non-teaching employees as performing a religious function.

- c. The Employer holds out petitioned-for teachers as performing a specific religious function.

To avoid the risk of "trolling" through an academic institution's operation to determine whether and how it is fulfilling its religion mission, the Board will decline jurisdiction if its examination reveals that the academic institution "holds out" faculty members, in communications to current or potential faculty and students, as well as the community at large, as performing a specific role in creating or maintaining the institution's religious purpose or mission. *Id.* at 8. The focus of this inquiry is on whether faculty members are held out as performing a specific religious function as part of their faculty responsibilities. *Id.* Generalized statements that faculty members are expected to, for example, support the goals or mission of the school are not alone sufficient to satisfy this burden. *Id.*



The Board will decline jurisdiction if the evidence shows that faculty members are required to serve a religious function, such as integrating the institution's religious teachings into coursework, serving as religious advisors to students, propagating religious tenets, or engaging in religious indoctrination or religious training. *Id.* at 9. Likewise, if the academic institution holds itself out as requiring faculty to conform to its religious doctrine or to particular religious tenets or beliefs in a manner that is specifically linked to their job duties, the Board will decline jurisdiction. *Id.*

In assessing this requirement, appropriate evidence includes, but is not limited to, job descriptions, employment contracts, faculty handbooks, and statements to current and prospective faculty and students, including recruiting documents. *Id.* The Board will not endeavor to look beyond these documents to determine the specific role petitioned-for faculty members actually play in fulfilling the school's religious mission, or to inspect the actual practice with respect to faculty as a whole, or individual teachers.<sup>11</sup> Rather, the Board relies on the institution's own statements about whether its teachers are obligated to perform a religious function. *Id.*

Here, I find that the record evidence sufficiently establishes that the Employer holds out faculty members as performing a specific role in maintaining its religious purpose or mission. The evidence indicates that teachers—even those faculty members teaching what would generally be deemed secular subjects—are required to serve a religious function, either by directly integrating Islamic teachings or views, or by refraining from incorporating themes and subjects expressly forbidden by the religion. Furthermore, the Employer communicates to newly-hired faculty that they must conform with certain religious tenets as part of their employment with the Employer. Finally, the petitioned-for faculty members are directly responsible for, and engage in, the religious indoctrination of the Employer's students.

At the orientation for newly-hired faculty, the Employer's Islamic Studies department chair, Dr. Dawood Abdulrahman, communicates the Employer's rules and procedures aimed at maintaining a religious educational environment. Teachers are informed that many of the Employer's rules are premised on the presented religious precepts, and that the teachers are expected to conform to these religious tenets underlying these rules. For instance, teachers are expected to maintain the separation of boys and girls, a separation that exists entirely for religious reasons. Additionally, the Employer's faculty may not encourage or promote the celebration of non-Muslim holidays, such as Halloween, Thanksgiving, and Christmas. Teachers are not free to play music in their classrooms. Nor may faculty celebrate student birthdays, maintain birthday charts in their classroom, or encourage students to bring food to celebrate their

---

<sup>11</sup> Parties may, however, present evidence relevant to demonstrating that faculty members do or do not perform a religious function. See *Pacific Lutheran Univ.*, 361 NLRB No. 157, slip op. at 9 fn. 13 (2014).

birthday. If teachers elect to provide candy incentives as a reward for academic performance, Dr. Abdulrahman communicates to the teachers that they must ensure that the candy does not include pork derivatives, because pork is not consumed by Muslims for religious reasons.

The Employer communicates to faculty that they will be required to serve a religious function, and record evidence indicates that faculty members do, in fact, serve a religious function as part of their faculty responsibilities. Teachers are required to raise Islamic principles during discussions of issues in biology and other natural science courses. Further, art department teachers are forbidden from depicting a nude human form for religious reasons. Moreover, the Employer conveys to teachers at new-hire orientation that they may not utilize stories, pictures, and activities focusing on pigs, magic, or witches in their lessons and classroom activities. Finally, there is evidence that the Employer disciplines faculty who espouse teachings that are critical of Islam, as the Employer suspended a teacher who played a film effectively blaming Islam for the terrorist attacks of September 11, 2001.

Moreover, the Employer's teachers engage in religious indoctrination and training. For instance, it is clear from the curriculum admitted in this record that Islamic Studies teachers are directly responsible for the propagation of Islam for the Employer's students. In addition, teachers in the Islamic Studies department lead the noon prayer session, as well as the morning prayer session that students must attend if they have arrived at school prior to the call to morning prayer. Further, though Arabic classes are not expressly intended to be religious, Arabic teachers are required to teach students passages from the Holy Quran, as well as sayings from the Prophet Muhammad.

In sum, I find that the record sufficiently establishes that the Employer holds out the petitioned-for teachers as performing a specific role in maintaining the Employer's religious educational environment as part of their faculty responsibilities. While documents such as the Employer's bylaws, faculty handbook, and operations manual are either largely silent on specific faculty functions required to create or maintain the Employer's religious environment or amount to general and aspirational statements that faculty must promote the values of Islam, all new faculty hires are required to attend the Employer's new-hire orientation. The record establishes that faculty members have, at some point, attended the session during which the Employer communicates to them the rules that the Employer expects its faculty to follow and the steps its faculty must take to promote an Islamic educational environment. Furthermore, though I am not required to look beyond the Employer's communications concerning the functions of its faculty, I am not confined to such evidence. The record sufficiently establishes that the Employer's faculty members do, in fact, perform a religious function, and I have considered that relevant evidence in reaching my conclusion. Thus, having found that the Employer has met its burden

established by the Board's holding in *Pacific Lutheran University*, I find that the Board should not assert jurisdiction over the petitioned-for faculty members.<sup>12</sup>

- d. The evidence does not establish that the Employer holds out non-teaching employees as performing a specific religious function.

The Board, in *Pacific Lutheran University*, stated that its holding was "limited to addressing the requirements for units of faculty members...." *Id.* at 8, fn. 11. On its face, then, the Board's holding in *Pacific Lutheran University* does not appear applicable to non-teaching employees at self-identified religious institutions. For that reason, and based on my review of the entire record, including the supplemental hearing and brief, I agree with the previous Regional Director that the Board should assert jurisdiction over the Employer's non-teaching employees. Consistent with my predecessor, I find that the Employer has not established that its non-teaching employees perform secular tasks without which the Employer would be unable to accomplish its religious mission. *See Ecclesiastical Maintenance Services, Inc.*, 325 NLRB 629, 630-31 (1998)(asserting jurisdiction over custodial employees of a diocesan-established company that cleaned diocesan buildings).

Assuming, however, that the Board's holding in *Pacific Lutheran University* applies equally to non-teaching employees at primary and secondary schools, I similarly find that the Employer has not established that the petitioned-for non-teaching classifications perform a specific role in creating or maintaining the Employer's religious educational environment. There is scant record evidence concerning the specific roles and functions of a vast majority of the petitioned-for non-teaching job classifications, let alone evidence concerning how these job classifications are held out to students, faculty, and the community at large.

The Employer's employee handbook states that "[i]t is the responsibility of all employees to conduct themselves in a manner that respects Islamic values and traditions of the Academy and its students." This is the type of generalized statement that the Board, in *Pacific Lutheran University*, signaled would be insufficient to meet this analytical prong. *Id.* at 8. Such a statement does not communicate that non-teaching employees are expected to perform a specific religious function, and the statement is not specifically linked to any job duties to be performed by the non-teaching employees. The Employer's mission statement, published across numerous mediums to teachers, students, and the public, is similarly insufficient. The statement that it is the Employer's mission to "enable ... students to excel academically while maintaining the values of Islam" fails to establish the critical link between the job duties of non-teaching employees and a religious educational environment

---

<sup>12</sup> Having determined that the Board should not assert jurisdiction over the petitioned-for faculty in this case, I consider it unnecessary to determine whether department heads are supervisors.

Moreover, the Employer's dress code and the non-teaching employees' adherence to that dress code do not establish a specific role in creating or maintaining the religious educational environment. Indeed, then-Director of Education—the highest-ranking educational position at the school—Rahima Abdullah testified that the Employer's dress code simply reflects professionalism. Furthermore, the record does not include sufficiently detailed and specific evidence that the Employer insists that employees in non-teaching classifications dress in religious attire. In sum, I do not conclude that employees wearing attire reflective of workplace decorum establishes that the non-teaching employees have a specific role in the creation or maintenance of a religious educational environment.

Further, the employee agreement signed by each employee does not indicate that non-teaching employees perform a religious function. All employees execute the same one-year contract, for which the school's personnel director merely changes the job title, class/grade, and compensation depending on the employee's position.

The Employer focuses on bus drivers and school cafeteria employees in its effort to establish that non-teaching classifications are held out as performing a religious function. However, the record contains insufficient evidence to support a conclusion that these two classifications are held out to faculty, students, and the community at large as performing a religious function. Furthermore, I consider that the core function of these two classifications—providing transportation and providing food—are not inherently religious or educational.

Thus, assuming *Pacific Lutheran University* applies to non-teaching employees at primary and secondary schools, I conclude that the Employer has not established that the petitioned-for non-teaching classifications perform a specific religious function. Accordingly, the Board should assert jurisdiction over the employees in the non-teaching classifications.<sup>13</sup>

#### **IV. Findings and Conclusions**

In accordance with my findings detailed above, I have found that the Employer holds itself out as a religious educational institution, and, thus, has met its threshold burden under the first prong of the Board's test in *Pacific Lutheran University*. I further find that the Employer has established that the petitioned-for faculty is held out as performing a specific role in creating or maintaining the Employer's religious educational environment, thereby satisfying the second prong of the *Pacific Lutheran University* test. Accordingly, I conclude that the Board should not assert jurisdiction over the petitioned-for teachers.

---

<sup>13</sup> Guidance counselors were voted subject to challenge in the election conducted September 13, 2012. As found by the prior Regional Director in the 2012 Decision and Direction of Election, the record was unclear on the issue of whether they are involved in the propagation of religious values or whether they perform a specific role in creating or maintaining the school's religious educational environment.

However, I find that the Board should assert jurisdiction over the petitioned-for employees in non-teaching classifications. In the event that *Pacific Lutheran University* is inapplicable to such non-teaching employees, I find, in agreement with the previously-issued Decision and Direction of Election, that the Employer's non-teaching employees do not perform secular tasks without which the Employer would be unable to carry out its religious mission. In the alternative, if *Pacific Lutheran University* is applicable to non-teaching employees at self-identified religious institutions, I find that the Employer did not establish by sufficient evidence that the employees in the petitioned-for non-teaching classifications perform a specific religious function. Thus, I conclude that the Board should assert jurisdiction over the Employer's non-teaching employees. This is consistent with the earlier Decision and Direction of Election issued by the Region on June 14, 2012. Pursuant to that Decision and Direction of Election, an Election was conducted on Thursday, September 13, 2012 and the ballots were impounded.

The parties stipulated that the petitioned-for unit is a mixed unit consisting of professionals and non-professionals. Under the proscription of Section 9(b)(1) of the Act, professional employees cannot be included in a non-professional unit without the consent of the professional employees. Professional employees were entitled to vote on two questions:

- (1) Whether they desire to be included in a group composed of non-professional employees; and
- (2) Their choice with respect to bargaining representative, if any.

*Sonotone Corp.*, 90 NLRB 1236, 1241-42 (1950). If a majority of professionals whose ballots were impounded vote "yes" on inclusion, their votes shall be counted with the votes of the non-professionals; if the majority vote "no," their votes will be counted separately to determine which labor organization, if any, they want to represent them in a separate bargaining unit.

Accordingly, these were two separate voting groups:

Group A: All full-time and regular part-time nurses, IT employees (also known as information technology employees), computer specialists, librarians, assistant librarians, finance accountants, internal auditors, finance clerks, transportation accountants, and finance employees employed by the Employer at its Fairfax County, Virginia school but excluding all teachers, bus driver managers, vehicle maintenance foremen, temporary health employees, English as a second language temporary teachers (also known as ESL temporary teachers), physical education temporary teachers, controllers, elementary coordinators, West Campus coordinators, assistant principals, vice principals, principals, directors of education, personnel managers, business managers, finance officers, transportation managers, directors general, acting directors general, executive assistants, managerial employees, guards, and supervisors as define in the Act.

Employees voting in Group A were asked two questions on the ballot:

- (1) Do you desire to be included in a unit with non-professional employees?
- (2) Do you desire to be represented for the purposes of collective bargaining by the Islamic Saudi Academy Employees Professional Association (ISAEPA)?

Group B: All other employees employed by the Employer at its Fairfax County, Virginia school, but excluding all teachers, bus driver managers, maintenance managers, vehicle maintenance foremen, temporary health employees, English as a second language temporary teachers (also known as ESL temporary teachers), physical education temporary teachers, controllers, elementary coordinators, West Campus coordinators, assistant principals, vice principals, principals, personnel managers, business managers, finance officers, transportation managers, directors general, acting directors general, executive assistants, all employees in Voting Group A, managerial employees, guards, and supervisors as defined in the Act.

If a majority of employees in Group A vote “yes” to the first question, indicating a choice to be included in a unit with non-professional employees, the group will be so included. Group A’s vote on the second question will then be counted with the votes of the non-professional Group B to decide the representative for the entire unit. If, on the other hand, a majority of the professional employees in Group A do not vote for inclusion, these employees will not be included with the non-professional employees, and their votes on the second question will be tallied separately to determine whether they wish to be represented in a separate professional unit.

I make the following findings regarding the appropriate unit. If a majority of the professional employees vote for inclusion in a unit with non-professional employees, I find the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act:

All full-time and regular part-time employees employed by the Employer at its Fairfax, Virginia schools, but excluding all teachers, bus driver managers, vehicle maintenance foremen, temporary health employees, English as a second language temporary teachers (also known as ESL temporary teachers), physical education temporary teachers, controllers, elementary coordinators, West Campus coordinators, assistant principals, vice principals, principals, directors of education, personnel managers, business managers, finance officers, transportation managers, directors general, acting directors general, executive assistants,

managerial employees, guards, and supervisors as define in the Act.

If a majority of the professional employees do not vote for inclusion in the unit with non-professional employees, I find that the separate voting groups set forth above constitute units appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act.

**V. Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D. C. 20570-0001. This request must be received by the Board in Washington by **September 15, 2015**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so.

Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E- filing instructions explaining how to file the documents electronically will be displayed.

DATED at Baltimore, Maryland this 1<sup>st</sup> day of September, 2015.

(SEAL)

/s/ **CHARLES L. POSNER**

Charles L. Posner, Regional Director  
National Labor Relations Board, Region 5  
Bank of America Center -Tower II  
100 South Charles Street, Suite 600  
Baltimore, Maryland 21201