

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 01**

**BOSTON COLLEGE**

**Employer**

**and**

**Case 01-RC-194148**

**BOSTON COLLEGE GRADUATE EMPLOYEE  
UNION-UNITED AUTO WORKERS**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Boston College Graduate Employee Union-United Auto Workers (the Union) seeks to represent a bargaining unit composed of Boston College graduate students who work for Boston College (Boston College or the University) in various classifications of graduate assistants, research assistants, teaching fellows, and teaching assistants.

Boston College asserts, first, that it is exempt from the Board's jurisdiction as a religious educational institution. In this regard, Boston College contends that the Board's test for a religious exemption, adopted in *Pacific Lutheran University*, 361 NLRB No. 157 (2014), is inconsistent with the religious exemption recognized by the U.S. Supreme Court in *NRLB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). Boston College next asserts that, even if the Board should apply the *Pacific Lutheran* standard, the University is exempt from the Board's jurisdiction as a religious institution. Finally, Boston College maintains that, should I find otherwise with respect to the institution as a whole, its Departments of Theology and Philosophy are exempt from the Board's jurisdiction.

Boston College asserts, second, that its graduate students are not statutory employees. In this regard, it contends that *Columbia University*, 364 NLRB No. 90 (2016), in which the Board recently held that student assistants are statutory employees, was wrongly decided. It further contends, in the alternative, that the facts of this case distinguish Boston College's graduate workers from the student assistants at issue in *Columbia University*.<sup>1</sup>

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<sup>1</sup> Should I find that the Board has jurisdiction over Boston College and that the petitioned-for graduate students are statutory employees, the parties have stipulated, and I find, that the following classifications shall be included in the unit:

Graduate assistant – other

Graduate assistant – other 15

Graduate assistant – research

Graduate research assistant

Research assistant – ledger

I find that Boston College has demonstrated, pursuant to the test articulated in *Pacific Lutheran*, that the petitioned-for graduate workers who work in its Theology Department are exempt from the Board's jurisdiction. I find that Boston College has failed to demonstrate that Boston College is an exempt institution with respect to the graduate students who are employed in its other departments and schools. Accordingly, I find that the Board has jurisdiction over all of the petitioned-for graduate student workers, with the exception of those who work in the Theology Department.

I find that Boston College has failed to demonstrate that its graduate workers are sufficiently distinct from the student assistants found to be statutory employees in *Columbia University* to warrant a different result.

## **JURISDICTION OVER BOSTON COLLEGE AS A RELIGIOUS EDUCATIONAL INSTITUTION**

### **Applicable legal standard for religious exemption**

In *Pacific Lutheran*, supra, the Board revised its standard for declining jurisdiction over faculty members at self-identified religious colleges and universities. In articulating its new test, the Board adopted a two-part standard. When a college or university claims a religious exemption from the Board's jurisdiction, the university must first demonstrate, as a threshold matter, that it holds itself out as providing a religious educational environment. Once that threshold requirement is met, the university must then show that it holds out the petitioned-for employees as performing a specific role in creating or maintaining the university's religious educational environment, as demonstrated by its representations to current or potential students and faculty members, and the community at large. 361 NLRB No. 157, slip op. at 11.

Boston College objects to the test outlined by the Board in *Pacific Lutheran* on the ground that it requires an inquiry, prohibited by the Supreme Court in *Catholic Bishop*, into whether faculty engage in functions that are sufficiently religious. It asserts that the appropriate test was set forth by the D.C. Circuit in *University of Great Falls v NLRB*, 278 F.3d 1335 (D.C. Cir. 2002), denying enforcement of *University of Great Falls*, 331 NLRB 1663 (2000). I note that, in *Pacific Lutheran*, the Board specifically rejected aspects of the *Great Falls* test. As I am required to follow Board precedent,

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Teaching fellow

Teaching fellow – 15

Teaching assistant

The parties have stipulated, and I find, that graduate students who work as graders shall be permitted to vote subject to challenge.

Finally, the parties have stipulated, and I find, that the following shall be excluded from any unit found appropriate: undergraduates, including undergraduate tutors, undergraduate research assistants, and undergraduate faculty research assistants; all students working in the School of Theology and Ministry, and all students working in the Division of University Mission and Ministry.

this is a matter that may be resolved only by the Board. Accordingly, I shall apply the *Pacific Lutheran* test.

In examining how an institution holds itself out pursuant to the *Pacific Lutheran* test, the Board will give more weight to contemporary self-presentation than to founding and historical documents. *Id.* Documents demonstrating this self-presentation would include “handbooks, mission statement, corporate documents, course catalogs, and documents published on a school’s website.” *Id.*, slip op. at 6. This showing is “minimal,” and “does not impose a heavy burden.” *Id.*, slip op. at 7. The first part of the *Pacific Lutheran* test, how the employer holds itself out, is a threshold showing.

Once the threshold requirement is satisfied, the analysis turns to how an institution holds out the petitioned-for employees. Again, the focus is on how the institution *holds out* these employees, avoiding an intrusive inquiry into the nature of the religious tenets of the institution or how effective it is at inculcating them. *Id.*, slip op. at 8. The Board “requires that [petitioned-for employees] be held out as performing a *specific religious function*.” [Emphasis in original.] *Id.*, slip op. at 8. “[G]eneral or aspirational statements, without specificity as to how the requirement affects actual job functions, will not suffice.” *Id.*, slip op. at 9. When the Board applied its new standard to the facts in *Pacific Lutheran*, it found the statement in the faculty constitution that members “become a member of a community of scholars who respect and uphold the principles of Lutheran Higher Education ...” *Id.*, slip op. at 12 fn. 22, to be aspirational as it did not implicate actual job functions.

Conversely, evidence showing that faculty members are required to integrate the institution’s religious tenets into coursework, serve as religious advisors to students, propagate those tenets, engage in religious training, or conform to the tenets in a manner specifically linked to their job duties is sufficient to exempt an institution from Board jurisdiction. *Id.*, slip op. at 9. Such evidence will be found in the school’s statements to students, faculty, and the public, including on its website and in its handbooks, employment contracts, and job descriptions. *Id.*, slip op. at 10. The test boils down to “whether a reasonable prospective applicant would conclude that performance of their faculty responsibilities would require furtherance of the college or university’s religious mission.” *Id.*, slip op. at 9.

In applying the *Pacific Lutheran* standard in this case, I acknowledge that *Pacific Lutheran* set forth the test to apply with respect to *faculty members* at a private college or university that claims to be a religious institution. The petitioned-for employees in this case are graduate student workers rather than faculty members. The Board has never addressed the applicability of the *Pacific Lutheran* test to graduate students who teach at a university. In *Saint Xavier University*, 365 NLRB No. 54 (2017), the Board recently announced that it declined to extend the test in *Pacific Lutheran* to a university’s nonteaching employees. As the petitioned-for teaching assistants, teaching fellows and graduate assistants either teach themselves or assist faculty who teach, I find them more akin to the faculty members at issue in *Pacific Lutheran* than the nonteaching employees in *Saint Xavier*. Therefore, I shall apply the *Pacific Lutheran* test to determine their status.

I shall apply the test articulated in *Saint Xavier* to determine the status of the petitioned-for research assistants, who are nonteaching employees. Under the test articulated in that case, the Board will assert jurisdiction over nonteaching employees of religiously-affiliated colleges and universities, unless it has been demonstrated that their actual duties and responsibilities require them to perform a specific role in fulfilling the religious mission of the institution. *Saint Xavier University*, supra, slip op. at 5.

**Whether Boston College holds itself out as providing a religious education environment**

**Facts**

Boston College is a non-profit university located in Chestnut Hill, Massachusetts that offers bachelor's, master's and doctoral degrees in various disciplines. It serves a student population of about 14,000, including about 9000 undergraduates and about 5000 graduate students and professional school students. According to the Boston College Bulletin, Boston College was founded by the Society of Jesus in 1863 as a small Jesuit college but it has now grown into a national institution of higher learning that is regularly listed among the top 40 universities in the nation.

Provost David Quigley oversees eight schools and colleges at Boston College: Morrissey College of Arts and Sciences, Carroll School of Management, Connell School of Nursing, Lynch School of Education, Boston College Law School, Boston College School of Social Work, Boston College School of Theology and Ministry, and Woods College of Advancing Studies.<sup>2</sup> The Morrissey College of Arts and Sciences has 22 departments, including, e.g., various science departments, mathematics, art history, music, language departments, political science, psychology, sociology, philosophy, and theology.

Boston College is a Catholic university that is affiliated with the Society of Jesus, whose members are referred to as Jesuits. According to the Mission Statement for Boston College, which is included in its current course catalog:

...Boston College commits itself to the highest standards of teaching and research in undergraduate, graduate and professional programs and to the pursuit of a just society through its own accomplishments, the work of faculty and staff, and the achievements of its graduates. It seeks both to advance its place among the nation's finest universities and to bring to the company of its distinguished peers and to contemporary society the richness of the Catholic intellectual ideal of a mutually illuminating relationship between religious faith and free intellectual inquiry.

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<sup>2</sup> The Morrissey College of Arts and Sciences, Carroll School of Management, Lynch School of Education, Connell School of Nursing, and Woods School of Advancing Studies offer degree programs for both undergraduates and graduate students. The Law School, School of Social Work, and School of Theology and Ministry offer only graduate programs.

Boston College draws inspiration for its academic societal mission from its distinctive religious tradition. As a Catholic and Jesuit university, it is rooted in a world view that encounters God in all creation and through all human activity.....In this spirit, the University regards the contribution of different religious traditions and value systems as essential to the fullness of its intellectual life.....

Boston College pursues this distinctive mission by serving society in three ways:

- by fostering the rigorous intellectual development and the religious, ethical and personal formation of its undergraduate, graduate, and professional students in order to prepare them for citizenship, service and leadership in a global society;
- by producing nationally and internationally significant research that advances insight and understanding, thereby both enriching cultures and addressing important societal needs; and
- by committing itself to advance the dialogue between religious belief and other formative elements of culture through the intellectual inquiry, teaching and learning, and the community life that form the University.

Boston College fulfills this mission with a deep concern for all members of its community, with a recognition of the important contribution a diverse student body, faculty and staff can offer, with a firm commitment to academic freedom, and with a determination to exercise careful stewardship of its resources in pursuit of its academic goals.

The Board of Trustees for Boston College includes Jesuits, and its president, who is a Jesuit, is hired by the Board of Trustees and “missioned” by the Society of Jesus. The University Statutes state, “As a university established by the Society of Jesus, Boston College is devoted to the moral and intellectual education of its students and to the general advancement of human understanding. It is founded on a belief in God the Creator and Redeemer.....” Among the purposes of Boston College, it lists “an intellectual reflection on religious experience and a respect for its value within the educational enterprise.”

Boston College refers to its Jesuit, Catholic tradition and mission throughout its website and in various publications.<sup>3</sup> There are numerous references to a “distinctive

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<sup>3</sup> For example, the Boston College Law School Mission Statement states, “Boston College and its law school are rooted in the Jesuit tradition of service to God and others.” A Carroll School of Management website page entitled “Jesuit tradition” lists a set of qualities that Jesuit schools set out to develop in their students include, *inter alia*, trust in God’s direction of their lives and a desire to find God working in all things.” A website page entitled “About Boston College School of Social Work states that “Boston College’s Jesuit, Catholic tradition makes it possible that rational thought and faith, logical inquiry and

pedagogy” related to Jesuit education and mission, also referred to as “Ignatian pedagogy.”<sup>4</sup> There are numerous references to various aspects of Ignatian pedagogy, such as teaching “the whole person,” integrating classroom learning with students’ lives outside the classroom, student “formation,” which includes spiritual formation, and reflection as a central element of a Jesuit education.

Boston College has a Division of University Mission and Ministry that is headed by Father Jack Butler, a Jesuit priest. The Division of Mission and Ministry offers various programs that allow members of the Boston College community to live out their Jesuit Catholic commitments, including daily liturgies, retreats for students and faculty that include spiritual and religious programs, and a service learning center that offers volunteer opportunities. Students, faculty, and staff are invited but not required to attend such events and programs. Father Butler makes presentations at sessions for admitted students who are deciding whether to come to Boston College and at orientations for incoming freshmen, at which he tells them about the nature of education at a Jesuit university and he hands out copies of “What Are We? An Introduction to Boston College and its Jesuit and Catholic Tradition,” referred to as the “Red Book.” The Division of Mission and Ministry also operates a Campus Ministry Office that has organizations that serve students from a variety of religious backgrounds, including Catholics, Christians of various denominations, Jews, Muslims, and Buddhists.

Students at Boston College are not required to be Catholic, but approximately 70 percent of undergraduates identify themselves as Catholic on their college applications or other survey instruments. Boston College is a liberal arts school that requires its undergraduates to complete a “Core Curriculum,” that includes two courses each in theology, philosophy, history, English, the natural sciences, and the social sciences, as well as one math course, one arts course, and a cultural diversity requirement.<sup>5</sup>

### Analysis

I find that Boston College holds itself out as providing a religious educational environment. In this regard, Boston College consistently identifies itself to students, faculty, and the community as a Catholic institution, and it publicly describes Jesuit

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belief are seen as complementary and synergistic.” The mission statement for the Connell School of Nursing, which is posted on its website and on the wall of the main entrance to the school, states, “In keeping with the University’s Jesuit, Catholic ideals, we focus on formation of the whole person and promotion of social justice.”

<sup>4</sup> This is a reference to Ignatius of Loyola, the founder of the Society of Jesus.

<sup>5</sup> A publication entitled, “The Vision Animating the Boston College Core Curriculum,” states, “The Jesuit, Catholic character of Boston College gives direction to the Core Curriculum by shaping both what is taught and how it is taught.....As a Jesuit, Catholic university, Boston college is grounded in a ‘faith that seeks understanding’ and in the proposition that thinking is an essential part of believing. The Core embodies that principle, not only in theology’s scholarly exploration of faith but in the conviction that the search for truth in any discipline is part of the search for God...The Jesuit educational tradition was founded on the premise that teaching the best of what was known should be combined with character formation in service of the common good.”

values as inspiring the education it provides. It prominently features Catholic and Jesuit themes on its website and in its publications. Its Mission Statement and University Statutes also invoke the religious nature of Boston College. Boston College offers many programs for students and faculty that feature Catholic and Jesuit themes. Boston College is organized as a non-profit institution. Thus, Boston College meets the threshold requirement established by *Pacific Lutheran*.

**Whether Boston College holds out its faculty and graduate student workers as performing a specific role in creating or maintaining its religious educational environment**<sup>6</sup>

How Boston College holds out its faculty members with respect to its religious mission

As the graduate student workers at issue here are often assigned to work with and support Boston College faculty members, I shall first examine the degree to which the University holds out its faculty members as performing a specific role in furthering its religious mission.

Neither the faculty nor the petitioned-for graduate students at Boston College are required to be Catholic or of any particular faith. Unlike the approximately 70 percent of undergraduates who self-identify as Catholic, less than half the faculty are Catholic or aligned with a religion.

The few job postings for faculty members that were submitted into evidence either do not mention the role of religion at Boston College at all or do not mention any specific role that faculty members are required to play in furthering the University's religious mission. For example, when the Biology Department advertised in 2015 for a full-time non-tenure track position in Ecology and Evolution, the ad stated that the Department welcomed applicants with expertise in any area of ecology from micro- to macroscopic who are familiar with novel approaches to ecological questions. The ad's description of the relevant qualifications, the courses that the candidate would be expected to teach, and other duties associated with the position made no reference to any role in religious matters.

Candidates for faculty positions are selected based on the quality of their research, their teaching skills, and their record of service. After some screening for faculty candidates, three finalists are generally invited to come to the campus, where they interview with the department chair, the dean of the relevant school, and the Provost. Provost Quigley and the Dean of the Morrissey College of Arts and Sciences, Gregory Kalscheur, testified that when they interview candidates for faculty positions, they discuss the Jesuit Catholic heritage and mission of the University, make sure the candidate is comfortable with that mission, and try to get a sense of how their teaching

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<sup>6</sup> In light of the University's argument that the graduate workers in its Theology and Philosophy Departments should be found to be exempt, even if should I find that the graduate workers in the remaining departments and schools are not exempt, I shall consider those two departments separately, below.

and life as a scholar would contribute to it.<sup>7</sup> Dean Kalscheur makes a hiring recommendation to the department that includes his evaluation of whether the candidate will add to the religious mission of the University, but this component is only one aspect of the decision-making process. The departments, which play a large role in hiring process, are also looking for experts in particular fields.

The Morrissey College of Arts and Sciences sends a packet of materials to those candidates for faculty positions who are invited to campus to interview. The packet includes the University's mission statement, a document entitled "The Catholic Intellectual Tradition: A Conversation at Boston College," "The Journey Into Adulthood – Understanding Student Formation," "A Pocket Guide to Jesuit Education," and "The Vision Animating the Boston College Core Curriculum." New faculty at the Carroll School of Management are sent a package of material that includes the Pocket Guide to Jesuit Education.

A 2016 job offer for a tenure track appointment in the Biology Department described the teaching duties that would be required of the faculty member hired but made no mention of any requirement to further the religious mission of the University. A document entitled "FAQ for New Faculty" makes no mention of any obligation to further the religious mission of the University.

Boston College holds an orientation for all new faculty members that includes welcome speeches by President Father William Leahy, a member of the Society of Jesus, Provost Quigley, and Division of University Mission and Ministry Vice President Father Jack Butler, all of whom discuss the distinctive Catholic mission of the University. At the orientation, new faculty are provided with copies of the Pocket Guide to Jesuit Education, the "Red Book," and various articles from a Boston College journal about the integration of formative education, academic disciplines, and spirituality. A Welcome Letter to new faculty at the Carroll School of Management includes various brochures, including one on Jesuit education. New faculty at the School of Nursing attend an orientation that includes a presentation on how the University's Jesuit values translate to School of Nursing aims.<sup>8</sup> Dean Kalscheur also holds a series of orientation lunches for new faculty in their first year in which he discusses how everyone has a role to play in contributing to the religious educational environment at Boston College.

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<sup>7</sup> Welkin Johnson, the chair of the Boston College Biology Department, testified that when he, himself, interviewed with then-Dean Quigley, the interview was mostly informational for the candidates and constituted an opportunity to ask questions about being at Boston College.

<sup>8</sup> For example, it states that the Jesuit commitment to integrating intellectual, personal, ethical, and religious formation and to uniting high academic achievement with service to others corresponds with the School of Nursing aim to translate knowledge to advance patient care and improve societal health outcomes. The presentation also includes the School of Nursing Vision Statement, which is "embedded in the philosophy of the Jesuit tradition" and the School of Nursing Mission Statement, which states, "In keeping with the Jesuit, Catholic ideals, we focus on formation of the whole person and promotion of social justice."



Boston College also provides other programs for faculty in which its religious mission is discussed. For example, Dean Kalscheur also holds a one-day Dean's Retreat for faculty who have been at Boston College for four years, at which he discusses how the religious educational environment at Boston College is shaped by its faculty across disciplines. Each year, Boston College sends four to five individuals to participate in an 18-month-long program called "Ignatian Colleagues Program" coordinated by Jesuit colleges across the country so that lay leadership at Jesuit universities, such as administrators, deans, and department chairs, understand its mission. At the end of the 18 months, participants are supposed to do a project that could include changing a syllabus or teaching to reflect something learned in the program. The Law School sponsors a retreat for students and faculty on the topic of "discernment," a Jesuit principle. Participation in all of these programs is voluntary.

The vast majority of the courses that the faculty teach, as described in Boston College's Bulletin, do not incorporate religious themes. Thus, the University offers numerous courses in the Departments of Biochemistry, Biology, Chemistry, Computer Science, Earth and Environmental Sciences, Economics, English, Fine Arts, Mathematics, Physics, Political Science, Psychology, Sociology, etc. that do not feature religious themes.

A small subset of courses that may be used to meet Core Curriculum requirements are referred to as "Renewed Core" courses. Renewed Core courses include a category of courses entitled "Complex Problems." Teaching assistants are assigned to assist faculty members who teach the Complex Problems courses.<sup>9</sup> These courses are supposed to be on topics that engage students and to represent the Jesuit ideal of care for the whole person and character formation. Faculty may submit proposals to the Core Renewal Committee to teach Core Renewal courses.<sup>10</sup> Faculty who develop new courses for Core Renewal must attend four two-hour workshops on teaching. The training has included topics such as how to facilitate discussion and technology in the classroom but also includes a talk by Dean Kalscheur on the vision of Jesuit education and spirituality.

Some faculty at the Carroll School of Management teach a course called "Portico" that is required of all undergraduate business majors. According to the Carroll School's Strategy Plan, Portico is one way in which it endeavors to carry out the religious and ethical mission of Boston College.<sup>11</sup> Portico teaches philosophy, ethics,

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<sup>9</sup> No teaching assistants are assigned to another category of Renewed Core courses called "Enduring Questions."

<sup>10</sup> Complex Problems courses are team-taught by faculty from two different departments that examine an issue of contemporary urgency and global significance. For example, faculty members from the History and Political Science Departments teach a course on the topic of terrorism and faculty members from the Earth and Environmental Science and the Sociology Departments teach a course on climate change.

<sup>11</sup> According to an article prepared by Carroll School Portico professors for a Journal of Business Ethics, a business school accrediting body requires all business programs to include social responsibility and ethical behavior in their curriculum, with each school implementing those themes in a way unique to each school.

and leadership to undergraduate business majors. It also includes a form of meditation called the Ignatian Examen. However, none of the petitioned-for graduate teachers are assigned to teach or assist with Portico courses.

The University Statutes set forth the professional qualifications required of faculty of various ranks, the criteria for faculty reappointment, and the criteria for promotion. In each case, the University Statutes require excellence in research, scholarly publications, excellence in teaching, and service to the University. There is no mention in the University Statutes of any evaluation of the faculty members' role in furthering the religious mission of Boston College. Nor is any obligation to advance the University's religious mission included in a list of faculty member teaching responsibilities that is set forth in the University Statutes.<sup>12</sup> Neither the University's Faculty Handbook nor its Employee Handbook reference the faculty playing any role in fostering the University's religious mission.

Dean Kalscheur, who chairs the Promotion and Tenure Committee for the Morrissey College of Arts and Sciences, testified that one of the factors considered in faculty promotional decisions at the College is the candidates' contribution to the distinctive mission of the University. He also testified that annual evaluations of faculty members evaluate their teaching, research, and service, all of which may contribute to the University's religious educational mission. Poor performance by faculty members on evaluations may result in being turned down for promotion or tenure or in non-renewal of their contracts, or it may have an effect on annual merit raises. Apart from recommendations for contract renewal in the Philosophy Department, discussed below, no evaluations or promotional recommendations for faculty were submitted into evidence.<sup>13</sup>

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<sup>12</sup> The University Statutes list the following teaching responsibilities for faculty members:

- a) competent fulfillment of teaching duties in assigned courses;
- b) involvement of students in the learning process;
- c) fair treatment of every student;
- d) maintaining an atmosphere conducive to appropriate learning;
- e) observance of academic regulations concerning course schedules, examinations, cancellation of classes, submission of grades and changes of grades;
- f) the preparation, proctoring and correction of student examinations;
- g) the direction and evaluation of student papers, dissertations, reports and projects; and
- h) the regular academic counseling and advisement of students; faculty members are to publish and maintain adequate office hours and are to be familiar with the curriculum and academic requirements of their School or College.

<sup>13</sup> Boston College submitted into evidence a document entitled "Outline for Promotion Committee Reports to the President." It appears to outline the content of reports to the President concerning promotion recommendations and covers teaching evaluations, advising, research productivity, service evaluation, and other aspects of the University's Mission, including whether the candidate for promotion is "supportive of the continuous development of Boston College's distinctive intellectual and religious heritage." There was no testimony about this exhibit, no evidence of how it is used, nor any examples of reports submitted to the President that followed such an outline.

Andrew Boynton, Dean of the Carroll School of Management, testified that annual reports on Carroll School faculty, which are used in the promotion and tenure process, measure the overall quality of their performance including their grading and student evaluations. He looks for student evaluations that say the professor cares about them, which is evidence of student “formation.” No annual reports for the Carroll School faculty were submitted into evidence.

A blank form used by students to evaluate their instructors was submitted into evidence. It calls for the students to rate their instructors on such matters as whether the instructor was prepared, returned assignments and tests conscientiously, stimulated interest in the subject matter, gave clear explanations, and treated the students with respect. No completed forms were submitted into evidence, and there is no evidence that students are asked to rate their instructors concerning their role in furthering the religious mission of Boston College.

#### How Boston College holds out its graduate workers with respect to its religious mission

Many graduate students at Boston College, including doctoral and master’s students, are assigned the role of teaching assistant, teaching fellow, graduate assistant, or research assistant at various points in their tenure at the University.

Graduate students typically serve as teaching assistants during the early years of their studies. Teaching assistants support a faculty member who is the lead instructor in a course. Teaching assistants may lead a discussion section attached to a lecture course, lead a discussion for one or two classes with the faculty member present, lead exam reviews, or hold office hours for students. They may help a faculty member grade assignments or tests, help design syllabi, writing assignments or exams, help choose course readings, or organize power point slides.

Teaching fellows are typically more advanced graduate students who design and teach their own courses, in nearly all cases for undergraduates.

Graduate assistants are the largest and most diverse category of graduate student worker at Boston College. Their duties may include supporting faculty members in their research or teaching. They may support grading or collect teaching materials. In the History Department, graduate assistants have curated on-line resources for graduate students and faculty.

Research assistants are graduate students who typically perform research with a faculty member in the department in which they are pursuing a degree, often in one of the science departments, although research assistants are also employed in other departments and schools.

Many doctoral students are promised a teaching assistantship and eventually a teaching fellowship at the time of their admission to a Ph.D. program. Graduate

students may be notified of their appointments either in the same letter that offers them acceptance to their Ph.D. program or in a separate letter notifying them of their appointment to a position such as a teaching assistantship. Samples of both types of letters that were submitted into evidence made no mention of any obligation to further the religious mission of the University.

The process of selecting graduate students for assignments as teaching assistants, teaching fellows, graduate assistants, or research assistants takes place at the department level and varies depending on the department. There are generally no postings for the graduate teacher or research assistant positions.<sup>14</sup> A department chair, director of graduate studies, director of undergraduate studies, or “Core moderator” in an individual department may select graduate students for these positions. At the Law School, faculty may approach students who have done well in their class and ask them to be a teaching assistant the following year.

Teaching assistants and teaching fellows are assigned to teach or assist in teaching one of hundreds of courses listed in the Boston College Bulletin, the vast majority of which are not described in the Bulletin as having any religious content. Some individual faculty members may lay out their expectations for teaching assistants in writing, but no such documents were submitted into evidence.

Those teaching assistants who are assigned to faculty teaching one of the Renewed Core Complex Problems courses attend one day of training that includes a presentation about the University’s commitment to Ignatian pedagogy. Complex Problems courses have three components: three weekly lectures given by the faculty members, weekly labs led by teaching assistants in which students engage in hands-on problem-solving activities, and weekly “reflection” sessions in which the faculty members, teaching assistants, and undergraduates integrate what they have learned in the classroom with “the principles that guide their lives.”

Boston College has a Center for Teaching Excellence (CTE) that offers training for graduate teachers. Its programs are optional for graduate students in all but a few departments.<sup>15</sup> The Mission Statement for CTE that is currently posted on the Boston College website does not reference religion, but the Mission Statement is currently being revised to reflect values that include seeking “to be a reliable source of support for faculty and all others committed to BC’s mission of student learning and formation” and “continually working to expand our understanding of teaching and learning in higher education and in the Jesuit tradition...” A list of CTE training events available to graduate students includes courses on topics that do not reference religion, such as

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<sup>14</sup> One posting, an ad for a research assistant at the Law School to conduct research on immigration law, was submitted into evidence. The posting made no mention of the research assistant having any responsibility to further the religious mission of the University.

<sup>15</sup> Graduate students in the Chemistry Department are required to attend CTE’s annual graduate student teaching conference, which covers “nuts and bolts” strategies for graduate teachers teaching for the first time. Graduate students in the Lynch School for Education and the Theology Department are required to complete CTE’s Apprenticeship in College Teaching.

“Grading for Learning,” “Leading Better Class Discussions,” “Assignment Design,” “Teaching Students with Disabilities,” “Effective Use of Educational Technology,” and the like. One graduate student brown bag lunch is entitled, “Transformative Pedagogies.”

Many departments provide their own orientation for teaching assistants and teaching fellows. A power point presentation entitled “Social Work PHD Program: Teaching Assistantship” describes the roles and tasks of teaching assistants but makes no reference to religious matters. The Roche Center for Catholic Education provides an orientation for research assistants and graduate assistants at the Lynch School of Education, but the record does not reveal what, if anything, these graduate workers are told about their role in furthering the religious mission of the College. The Law School offers no orientation for its teaching assistants and research assistants before they begin their assignments.<sup>16</sup> The teaching assistants at the School of Nursing do not have a formal orientation, but Dean Gennaro testified that she has communicated to the teaching assistants about their role and expectations, telling them to remember that God is in all people and that they need to be flexible with students.<sup>17</sup>

Potential applicants to graduate programs at Boston College may learn about its degree programs and teaching assistantships, teaching fellowships, research assistantships, and graduate assistantships from its website. Descriptions of graduate programs in Biology, Chemistry, Classical Studies, Geology and Geophysics, Earth and Environmental Sciences, Economics, English, History, Mathematics, Psychology, Physics, Political Science, Romance Languages and Literature, Slavic and Eastern Languages, and Sociology were submitted into evidence, along with “Learning Outcomes” for most of those programs that describe the abilities expected of graduate students upon completion of each program. None of these program descriptions or Learning Outcomes mentions that student workers have any role in furthering the religious mission of the University. The Doctoral Policies and Procedure of the Lynch School of Education, also posted on the University website, includes a description of the duties associated with various types of graduate assistantships available to its graduate students but includes no mention of any role advancing the religious mission of the University.

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<sup>16</sup> The Law School does provide an orientation for all incoming first year law students at which they are given an Academic Policies and Procedures booklet. The booklet includes a mission statement which states that Boston College and its Law School are rooted in the Jesuit tradition of service to God and others. Maris Abbene, Associate Dean of Students at the Law School testified that she gives a presentation to the new law students during the orientation concerning the mission of Boston College, the school’s belief in “the whole person,” discernment, and what it means to be an ethical lawyer.

<sup>17</sup> Although the School of Nursing does not provide a formal orientation for its teaching assistants, it provides an orientation for new students at which the students are taught about the School’s Jesuit mission, Ignatian pedagogy, and meeting the needs of the whole person when treating patients. There is also a mandatory retreat for sophomores called SCRUBS that covers discernment and being with patients at tender times of life. SCRUBS is attended by faculty but not by teaching assistants.

Each department has its own system for evaluating teaching assistants. The Law School does not evaluate its teaching assistants and research assistants. Some departments have faculty prepare written evaluations, while others have faculty members report back to the department on the performance of their graduate students at an end-of-year meeting or in conversations with a department chair or director of graduate studies. The evaluations may be considered when graduate students apply for awards or teaching jobs. No written evaluations were submitted into evidence, and there is no evidence that teaching assistants, teaching fellows, graduate assistants, or research assistants are evaluated on the basis of their role in furthering the religious mission of Boston College.

Analysis with respect to teaching fellows, teaching assistants, and graduate assistants

The record does not establish that Boston College holds out its graduate teachers, i.e., teaching fellows, teaching assistants, and graduate assistants, as performing a specific role in furthering its religious mission. In so concluding, I have relied on evidence concerning the roles of both the petitioned-for graduate teachers and the faculty members whose teaching the graduate teachers support.

I acknowledge that there is ample evidence in the record that Boston College makes its identity as a Catholic, Jesuit institution and its religious mission known to its faculty, prospective faculty, graduate teachers, and prospective graduate students in various ways. Thus, there are numerous references to the University's religious identity and mission on its website, in publications that it distributes to both faculty and students, and in speeches given to faculty and students at orientations, retreats, and similar events.

However, none of that evidence demonstrates that its faculty and/or the petitioned-for graduate teachers are informed that their own job duties encompass furthering the University's religious mission. Neither the faculty nor its graduate teachers are required to be Catholic. Any religious programming sponsored by Boston College, such as that provided by the Division of University Mission and Ministry, by the Dean, or by other organizations, is voluntary for both faculty and graduate teachers. There is no evidence that either faculty or graduate teachers are required to serve as religious advisors to students, to propagate religious tenets or to engage in religious indoctrination or religious training.

With respect to the role of faculty, there is no record evidence of any ads or postings for faculty positions that mention an obligation on their part to further the institution's religious mission. While Provost Quigley and Dean Kalschauer testified that they discuss the University's Jesuit mission with candidates for faculty positions to make sure they are comfortable with it and would contribute to it, these are the sort of generalized statements that are inadequate to establish that these faculty members are expected to perform a religious function. Thus, in *Saint Xavier University*, 364 NLRB No. 85 (2016), the Board denied review of the Regional Director's finding that petitioned-for adjunct faculty were not held out as performing a specific religious

function. In that case, the Regional Director found that statements in job advertisements and elsewhere, such as “Understanding and appreciation of the Catholic identity and Mercy heritage of the University required” and “All professors are expected to be aware of and committed to the Catholic mission and identity of their institutions” were the sort of generalized statements found insufficient in *Pacific Lutheran*. Regional Director’s Supplemental Decision and Order at p. 11, Case 13-RC-02205 (2015).

There is no evidence of any job offers or employment contracts that reference a requirement to inculcate the Catholic religion. The list of faculty teaching responsibilities set forth in the University Statutes does not reference any responsibility to further the University’s religious mission. Nor did the University submit into evidence any annual evaluations of faculty or any recommendations for promotion, tenure or contract renewal that establish that faculty are evaluated with respect to their furtherance of the University’s religious mission.

With a few exceptions described below, the vast majority of courses taught by faculty members and graduate teachers are described in the Boston College Bulletin as having no religious content at all. Thus, faculty and graduate teachers teach courses in biochemistry, physics, math, psychology, economics, English literature, Romance languages, and the like.

With respect to graduate teachers, the record reflects that the publicly available descriptions of the vast majority of the University’s graduate programs and related teaching assistantships, teaching fellowships, and graduate assistantships do not mention that graduate teachers are expected to play any role in advancing the University’s religious mission. There is no record evidence that graduate teachers are trained to teach Catholic tenets; the training offered by CTE is generally optional and covers teaching strategies that have no bearing on religious matters. Nor is there any evidence that graduate teachers are evaluated on the basis of their ability to further the University’s Jesuit mission.

This case is similar to *Pacific Lutheran* and subsequent cases applying the *Pacific Lutheran* test, in which the Board found that petitioned-for employees were not held out as providing a specific role in advancing their institution’s religious mission. In *Pacific Lutheran*, supra, slip op. at 12-14, the Board found that contingent faculty were not held out as performing any religious function where the university bylaws, faculty handbook, and website pages were silent with respect to the faculty’s role in fostering religion; faculty job postings and contracts did not mention the need to serve any religious function; and the university did not take adherence to Lutheranism into account in hiring, promotion, tenure or evaluation decisions. In *Seattle University*, 364 NLRB No. 84 (2016), the Board denied review of the Regional Director’s determination that the petitioned-for contingent faculty generally did not play a role in creating or maintaining the university’s religious environment, where the vast majority were not hired to advance the institution’s religious goals. “For example, calculus teachers are hired to teach calculus. They are not required to be Catholic or to take any part in any religious

activities on or off campus religion is not mentioned in their employment contracts.” *Id.*, slip op. at 2. Accord, *Saint Xavier University*, 364 NLRB No. 85 (2016), slip op. at 2.<sup>18</sup>

Analysis with respect to research assistants

Pursuant to *Saint Xavier University*, supra, the Board will exert jurisdiction over nonteaching employees of religiously affiliated colleges and universities unless it has been demonstrated that their actual duties and responsibilities require them to perform a specific role in fulfilling the religious mission of the institution. The petitioned-for research assistants conduct research in labs in science departments and in other departments and schools at Boston College. There is no record evidence that they perform any duties that relate even remotely to the religious mission of the University. Accordingly, research assistants are not exempt from the Board’s jurisdiction.

**Whether Boston College holds out its faculty and graduate workers in the Theology and Philosophy Departments as performing a specific role in advancing its religious mission**

The Theology Department, one of the departments within the Morrissey School of Arts and Sciences, offers a Ph.D. program as well as a joint master’s program with the Department of Philosophy.<sup>19</sup> A description of the program that is sent to prospective students states that the doctoral program “is confessional in nature and envisions theology as ‘faith seeking understanding.’” Accordingly, the program aims at nourishing a community of faith, scholarly conversation and research centered in the study of Christian life and thought...” The chair of the department, Richard Gaillardetz, testified that theology departments differ from religious studies departments in that religious studies entails the scholarly study of religion, leaving out the question of ultimate truth, while theology departments start from a position of religious commitment. He testified that any graduate student applying to a theology department Ph.D. program would be

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<sup>18</sup> In *Seattle University*, the Regional Director’s decision that was upheld by the Board noted that, upon hire, the contingent faculty at issue in that case attended a training event at which the university’s president began the training with a speech on the school’s Jesuit mission. Further, the faculty handbook stated that, upon accepting a teaching contract, faculty members became committed to the University’s mission of educating the whole person, providing professional formation, and empowering leaders for a just and humane world within the context of the Catholic and Jesuit educational tradition. Nonetheless, as here, a list of specific duties of faculty members made no reference to religion, nor was there any mention of religion in job postings, appointment letters, or student evaluations.

In the Supplemental Decision and Order upheld by the Board in *Saint Xavier University*, the Regional Director noted the existence of various aspirational mission and vision statements about the Catholic mission and identity of the university as well as religious programming offered by the university’s Office for University Mission and Ministry. Nonetheless, he found that the statements were the sort of generalized statements that are insufficient under *Pacific Lutheran*, that the faculty at issue were not held out as furthering the school’s religious mission, where attendance at religious programs was entirely voluntary, and none of the employment applications or job postings in the record included any statements to suggest that adjuncts must integrate religious tenets into course work or serve as religious advisors, engage in religious training, or conform to the tenets of Catholicism in the course of their job duties.

<sup>19</sup> The Theology Department is distinct from the University’s School of Theology and Ministry, which the parties have agreed to exclude from any unit found appropriate.



well aware of the difference. When hiring faculty for the Theology Department, one faculty member from the School of Theology and Ministry is included in the search committee.

The vast majority of Ph.D. students in the program aspire to positions such as academics or ethicists. While the Theology Department does not itself ordain priests or ministers, some of its students are being trained for ordination or religious life, in that their religious tradition recognizes the courses they take in the Boston College Theology Department as fulfilling some portion of their requirements.<sup>20</sup>

The Theology Department has about 72 Ph.D. students. Each year, about 20 to 22 serve as teaching assistants and 10 serve as teaching fellows. The Theology graduate program's "Guidelines for the Departmental Teaching Assistant Program" does not reference any obligation by its teaching assistants to further the University's religious mission. However, the teaching assistants are assigned to assist with one of the courses that undergraduates must take to fulfill their Theology Core requirement, while the teaching fellows teach one of those courses on their own. The courses listed in the Boston College Bulletin that fulfill this requirement include Biblical Heritage I and II, Introduction to Christian Theology I and II, Exploring Catholicism: Tradition and Transformation, and The Religious Quest I and II. The course description for Exploring Catholicism, for example, describes the course as an "exploration of the vision, beliefs, practices, and challenges of Catholicism. The first semester explores human existence as lived in the light of the Mystery of God and the gift of Jesus Christ...."

The Theology Department provides a series of professional development workshops specific to teaching Theology in the classroom that are optional but students attend almost all of them. Faculty teaching the same course, such as Exploring Catholicism, meet with the teaching assistants as a group to compare syllabi and discuss the challenges, but most of the training is done during one-on-one mentoring between the professor and teaching assistant. Gaillardetz and the director of graduate studies orient the teaching fellows as to how the courses they teach fit into the vision of the department and the mission of the University.

The Philosophy Department, also within the Morrissey School of Arts and Sciences, offers a Ph.D. program as well as undergraduate courses. According to the Department's Statement of Vision, the primary purpose of its graduate program is to educate students professionally as philosophers. Nothing in the Department's Graduate Studies Handbook informs students that they are expected to play a role in furthering the University's religious mission.

Philosophy Department faculty are not generally required to be Catholic, although four or five of its 24 faculty members are priests. Five ads for faculty positions

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<sup>20</sup> Thus, there are currently students seeking ordination in the Episcopal Church and students in a Catholic religious order who seek to meet some of their requirements by taking courses in the Boston College Theology Department. Determination of whether those courses fulfill such requirements is outside the purview of the Theology Department.

in the department were submitted into evidence, all of which solicited applications from candidates with competence in various subspecialties of philosophy and sought strong research and teaching skills. The ads noted that responsibilities include teaching undergraduate Core courses and that Boston College is a Catholic university in the Jesuit tradition.

One faculty member in the Philosophy Department is required to be Roman Catholic. A search committee for a Chair of the Philosophy Department and Chair in Catholic Philosophy sent a document entitled “Profile of the Chairholder” to potential candidates. The latter position was to be held by a Roman Catholic, to address the education of young people in the Catholic philosophical tradition and to advance the vision articulated in the Department’s Statement of Vision.

The Philosophy Department’s “Statement of Vision Providing Context for Hiring Requests” makes reference to Christian teaching, the complementarity of faith and reason, and St. Ignatius’ call to see God in all things as an approach to teaching. It discusses “the challenge of becoming an elite research institution (or at the department level, Ph.D. program) while maintaining a distinctively religious identity.”

Most of the course descriptions for the approximately 69 philosophy courses listed in the Boston College Bulletin do not appear to include religious themes, but a few touch on the topic of religion.<sup>21</sup> A few of its courses are cross listed as satisfying both Philosophy and Theology Core requirements or otherwise cross-listed as both Philosophy and Theology courses.

Boston College submitted into evidence five recommendations sent by former Department Chair Father Arthur Madigan to Dean Kalscheur in 2015, as part of the contract renewal process for faculty in the Philosophy Department. In his recommendations, Father Madigan reviewed student evaluations of the faculty members’ teaching, including their ratings and comments, and he discussed the faculty

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<sup>21</sup> Thus, as described in the Boston College Bulletin, “Perspectives on Western Culture” includes consideration of the emergence of Christianity and Islam and medieval explorations of the relationship between faith and reason. “The Challenge of Justice” course includes consideration of the contribution of Catholic theology in the contemporary conversation about justice and peace. “Mind and Body” includes consideration of whether there is a spiritual dimension to life. There is a course called “Buddhist Ethics in Theory and Practice.” A course entitled “Philosophy of Religion in Human Subjectivity” considers how the question of God or of supernatural religion arises in a post-modern existential philosophy of subjectivity. “Augustine” examines how Augustine and other contemporary philosophers includes topics such as the nature of faith, skepticism, the problem of evil, and the nature of God. “Philosophy of Theologians,” designed especially for Theology and Ministry students, covers philosophical texts that have been important in the development of Christian theological reflection. A course called “Ethics, Religion, and International Politics” is described as an examination of the role of religion in international politics and of ethical approaches to international affairs.

Boston College submitted into evidence a few reports prepared by Professor Arthur Madigan in which he summarized the discussion that took place in various Philosophy Department classes that he visited in 2015. I decline to rely on this evidence, as the Board stated in *Pacific Lutheran* that it would not inspect a university’s actual practice with respect to faculty members or examine the specific actions of any individual teacher. *Pacific Lutheran*, supra, slip op. at 9.

members' grading averages. None of the recommendations referenced the ability of the faculty members in advancing the religious mission of Boston College.

The Philosophy Department has about 20 doctoral students in any given year. In their first year, they work as teaching assistants,<sup>22</sup> and their work for the faculty member to whom they are assigned includes copying and scanning documents, tracking down sources for a bibliography, leading discussions, grading, and occasionally substituting in the classroom. After that, they serve as teaching fellows for three to four years and generally teach a Core course called Philosophy of the Person or Basic Logic. Neither of those courses is described in the Boston College Bulletin as including religious themes.<sup>23</sup> A reading list for the Philosophy of the Person course includes Philosophical Passages of St. Thomas Aquinas, which discusses religious themes, along with works by philosophers such as Plato, Aristotle, Descartes, Kant, and Mill, whose works would be included in an introductory philosophy course at any liberal arts institution.

First and second-year graduate students in Philosophy who are or will become teaching fellows are required to take a Seminar in Teaching over the course of four semesters. According to the Graduate Studies Handbook for the Department, the seminar covers issues such as preparation of syllabi and exam schedules, fundamentals of the art of teaching, and advising. No religious themes are mentioned in the description of the seminar. The Department's Director of Graduate Studies or designee visit the classrooms of teaching fellows and the Chair of the Department receives data on their grading and on the student evaluations of the courses they teach. The student evaluations are also considered when teaching fellows are being considered for teaching excellence awards given out by CTE. There is no evidence, however, that teaching fellows in the Philosophy Department are evaluated on the basis of their role in advancing the religious mission of Boston College.

### Analysis

I find that Boston College holds out those teaching assistants and teaching fellows who are employed by the Theology Department as performing a specific religious function at the University. Since the issuance of *Pacific Lutheran*, the Board has consistently found that faculty teaching in Departments of Theology and Departments of Religious Studies should be excluded from overall units of faculty, where they perform a specific role in furthering the institution's religious mission by teaching courses with religious content and the faculty have expertise in Catholic theology or other faith-based traditions. See, *Seattle University*, 364 NLRB No. 84 (2016); *Saint Xavier University*, 364 NLRB No. 85 (2016).<sup>24</sup>

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<sup>22</sup> The Philosophy Department refers to these individuals as graduate assistants.

<sup>23</sup> According to the Graduate Student Handbook for Philosophy students, the Philosophy of the Person course "introduces students to philosophical reflection and to its history through the presentation of the writings of major thinkers from ancient, medieval, modern and contemporary periods...."

<sup>24</sup> See also the Board's unpublished denials of review of Regional Directors' determinations to exclude religious studies and theology departments in *Loyola University Chicago*, Case 13-RC-164618 (review

Here, the record shows that teaching fellows and faculty in the Theology Department, assisted by teaching assistants, teach courses that are presented in the Boston College Bulletin as having religious content and that undergraduates may take those courses to fulfill core academic requirements. In order to teach those courses, faculty and graduate teachers in the Theology Department must necessarily have expertise in theology. Some graduate students in the department are being trained for religious life or ordination. The Theology Department teaching assistants and teaching fellows are assigned to assist in teaching or to teach, respectively, a Theology Core course, such as “Exploring Catholicism,” described as an “exploration of the vision, beliefs, practices, and challenges of Catholicism.” Accordingly, teaching assistants and teaching fellows employed by the Theology Department are exempt from the Board’s jurisdiction.

I find that Boston College does not hold out those teaching assistants and teaching fellows who work in the Philosophy Department as performing a specific religious function. Neither the graduate teachers nor the faculty in the Philosophy Department are required to be Catholic, with the notable exception of the chair of the Department. The Department’s Statement of Vision states that its primary purpose is to educate professional philosophers, and nothing in the Department’s Graduate Student Handbook informs students that they will be expected to play a role in advancing the University’s religious mission. Beyond noting that Boston College is a Catholic University in the Jesuit tradition, the job postings for Philosophy Department faculty that were submitted into evidence do not suggest any requirement to advance the institution’s religious mission. Nor is there any evidence that Philosophy Department faculty or graduate teachers are evaluated on the basis of their role in advancing the University’s religious mission.

The vast majority of the courses taught in the Philosophy Department, as described in the Boston College Bulletin, do not include any religious content at all. While a small number of Philosophy Department courses do explore the topic of religion, some of them include study of various religions, and the course descriptions do not suggest that any of these courses are intended to advance the University’s Catholic mission, in particular. The two courses taught by Philosophy Department teaching fellows, in particular, are not described as including religious themes. The teaching assistants and teaching fellows shall be included in the petitioned-for unit.

## **EMPLOYEE STATUS OF THE GRADUATE STUDENT WORKERS AT BOSTON COLLEGE**

### **Facts**

Doctoral students at Boston College are typically promised five years of funding, and teaching and/or research is an expectation of doctoral training in many

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denied (March 16, 2017); *Duquesne University of the Holy Spirit*, Case 06-RC-080933 (review denied April 10, 2017); and *Manhattan College*, Case 02-023543 (review denied April 20, 2017).

departments. In many instances, appointments to teaching positions and research assistantships are made as part of the graduate students' financial aid package, while in other cases graduate students, such as master's students, are compensated for teaching or research services apart from any financial aid package.

Boston College offers a variety of resources to support its graduate teachers. CTE offers numerous programs for graduate teachers that aim to improve their teaching skills. For example, CTE offers a "Boot Camp" for both faculty and graduate students a week before the beginning of each semester that includes workshops such as "Planning for the First Day," "Leading Better Class Discussions," "Grading for Learning," and "Fostering Student Resilience." It also offers a graduate student teaching conference each August semester that offers nuts and bolts strategies for graduate students teaching for the first time, with sessions on topics such as "Advice for Teaching Assistants," "Advice for Teaching Fellows," "Teaching Natural Sciences in the Lab," and "Facilitating Better Classroom Discussions." It offers an Apprenticeship in College Teaching Program for graduate teachers that leads to a certificate for those students who complete the entire program and covers such topics as course design, assignment design, and strategies for effective lecturing. CTE also offers programs for graduate teachers in response to requests by individual departments and provides individual consultations with graduate teachers as they begin to work in the classroom. CTE also offers a series of discussions for graduate teachers called "brown bag lunches" that are intended to improve their teaching skills. Attendance at most programs offered by the CTE is voluntary, although some departments, such as the Biology, Chemistry and Theology Departments and the Lynch School for Education, require their teaching assistants and teaching fellows to attend certain programs.

In addition to the support offered by the CTE, some departments offer their own seminars and workshops to assist aspiring teachers. Graduate teachers are also mentored by individuals in their department who have expertise in teaching, such as the faculty members to whom they are assigned, directors of undergraduate studies, and directors of graduate studies. In the English Department, graduate teachers work as "heavily mentored" teaching assistants during their second year before they become teaching fellows in their third and fourth years. Underperforming graduate teachers are generally not pulled out of the classroom but are given additional support, including mentoring by faculty and consultations by the CTE.

Boston College offers teacher training programs for its faculty as well as for graduate teachers. For example, CTE sponsors the Cohort Program for faculty, who meet as a group to discuss a certain theme, such as "Inclusive Classrooms" and "Hybrid Course Design," for eight or nine hours during the academic year, and each faculty member commits to revise one of his or her courses in light of the theme. CTE offers numerous workshops for faculty on topics such as "Difficult Dialogues in the Classroom" and Group Work for the Math Department. CTE also offers an annual "Excellence in Teaching Day" with various speakers that is intended primarily for faculty, although it is also attended by graduate students. It is also common for younger faculty members to be mentored by more seasoned faculty members.

With respect to research assistants, Chair of the Biology Department Welkin Johnson testified that research assistants in the lab do experiments and collect data that will be used for their thesis. They meet with their advisors, who provide both scientific counseling and career counseling. They typically work in a lab of five to fifteen individuals, including research faculty, post-doctoral fellows, other graduate students at different stages of their career, all of whom providing mentoring to the research assistants.

### Analysis

In *Columbia University*, supra, the Board held that student assistants who perform work at the direction of the university, for which they are compensated, are statutory employees entitled to the protections of the Act. Boston College contends that *Columbia University* was wrongly decided. As I am constrained to follow Board precedent, an assertion that *Columbia University* was wrongly decided is a matter that may be resolved only by the Board.

Boston College also maintains, first, that its graduate teachers are distinguishable from the student assistants/instructional officers whom the Board found to be statutory employees in *Columbia University* and that it has, therefore, met its burden of demonstrating that they are not statutory employees. In this regard, the *Columbia University* Board found that the fact that the student assistants at issue there “were thrust wholesale into many of the core duties of teaching – planning and giving lectures, writing exams, etc., including such critical courses as Columbia’s Core Curriculum, suggests that the purpose extends beyond the mere desire to inculcate teaching skills.” Id., slip op. at 16. Boston College contends that the training and guidance it offers to graduate teachers in the form of courses, seminars, boot camps, brown bag lunches, mentoring, etc. demonstrate that they are “guided every step of the way” and that, unlike the student assistants in *Columbia University*, teaching is part and parcel of the students’ educational experience.

I conclude that Boston College has not shown any significant differences between its graduate teachers and those in the *Columbia University* case that would compel a different result here. Assuming, without deciding, that the Boston College’s graduate teachers receive more teacher training and support than was offered to the *Columbia University* student assistants, the *Columbia University* Board made it clear that it rejected “a focus on whether student assistants have a “primarily educational” employment relationship with their universities.” Id., supra, slip op. at 6. “We can discern no...policies that speak to whether a common-law employee should be excluded from the Act because his or her employment relationship co-exists with an educational or other non-economic relationship....Even when such an economic component may seem comparatively slight, relative to other aspects of the relationship between worker and employer, the payment of compensation, in conjunction with the employer’s control, suffices to establish an employment relationship for purposes of the Act.” Id., supra, slip op. at 6.

I note that CTE offers intensive teacher training programs to Boston College faculty as well as to graduate teachers, but the Board has long held that university faculty are statutory employees, and there is no contention by Boston College that its faculty are not statutory employees by virtue of the training and mentoring they, too, receive.

Second, Boston College contends that its research assistants are distinguishable from those whom the Board found to be statutory employees in *Columbia University*, in that they are “guided and led” by faculty during the entire course of their research, that they are not “directed” in the same way that an employer directs or controls an employee’s work, and that the primary goal of the relationship between faculty and research assistants is to strengthen their education. This argument was expressly rejected by the Board in *Columbia University*. “The fact that a research assistant’s work might also advance his own educational interests as well as the University’s is not a barrier to finding statutory-employee status.” *Id. supra*, slip op. at 17.

I find, therefore, that the petitioned-for graduate assistants, research assistants, teaching assistants, and teaching fellows are statutory employees.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

Included:

All graduate students employed by Boston College at its Chestnut Hill, Massachusetts facility in the positions of:

Graduate assistant – other  
Graduate assistant – other 15  
Graduate assistant – research  
Graduate research assistant  
Research assistant – ledger  
Teaching fellow  
Teaching fellow – 15  
Teaching assistant

Excluded:

Undergraduates, including undergraduate tutors, undergraduate research assistants, and undergraduate faculty research assistants  
All students working in the School of Theology and Ministry  
All students working the in Division of Mission and Ministry

Graduate students who work as graders shall be permitted to vote subject to challenge.

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by BOSTON COLLEGE GRADUATE EMPLOYEE UNION-UNITED AUTO WORKERS.

### **A. Election Details**

The election will be held in a manner and on a date, time, and place to be determined.<sup>25</sup>

### **B. Voting Eligibility**

As agreed to by the parties, eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the issuance of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(I) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

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<sup>25</sup> I note that the spring semester at Boston College has now ended, and the Employer stated at the hearing that students may leave campus for the summer.



To be timely filed and served, the list must be *received* by the Regional Director and the parties by **May 24, 2017**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election, to be provided, in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

## RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: May 17, 2017



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JOHN J. WALSH, JR., REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 01  
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