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## ALLEGHENY COUNTY LABOR COUNCIL REPORT OF LEGAL COUNSEL May 4, 2017

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A recent board decision involving a unionization effort here in Pittsburgh dealt with the exemption of certain religious institutions from some of the protections of the National Labor Relations Act. In the April 10, 2017 decision of *Duquesne University v. United Steelworkers*, the National Labor relations Board affirmed the holding of the regional director which recognized the adjunct faculty association as a legitimate collective bargaining organization.

In interpreting the NLRA, the Supreme Court and the Board have grappled with the difficult question of government intervention in religious institutions. It's a constitutional first amendment problem—the separation of church and state. Essentially, the courts and the Board seek to avoid overly entangling itself—a government entity—with certain religious organizations. Through a number of cases over decades, the Board has developed a way to determine whether or not the Board will exercise jurisdiction over a religious university. The Board will not exercise jurisdiction over University faculty if the employer can demonstrate that: 1.) the university holds itself out as providing a religious educational environment and 2.) the petitioned for faculty perform a specific role in creating or maintaining the university's religious educational environment.

In this case, a group of part-time adjunct faculty formed an association and voted for union representation back in 2012. They sought to collectively bargain with their employer, the University. The University resisted the effort claiming it was exempt from the Board's jurisdiction as a religious Catholic institution. Practically speaking, the professors who voted to be represented approximately five years ago have not been represented by their chosen union representative.

The Board ultimately rejected Duquesne's argument and ruled in favor of the union. The Board first ruled that Duquesne University did hold itself out as providing a religious education because it identified as a Catholic institution, Catholic religious services were held on campus, and Catholic themes were featured in its mission statement, website, publications and student recruitment materials. However, the Board held, Duquesne did not hold out the petitioned for faculty members out as performing functions which relate to its religious environment. This was so because faculty members, aside from the few who taught theology courses, did not contribute or advocate for the University's religious mission at all. Although aware of Duquesne's religious



affiliation, none of their job responsibilities included advancing any Catholic cause for the University.

As a result, the Board held that it could assert jurisdiction over the matter and the faculty could vote to be represented by a union for purposes of collective bargaining. This case is not yet final, Duquesne might still appeal the decision. Nonetheless, this was another big win for labor. It is important to the union movement because some religious institutions—in this case a University—cannot hide behind religion to deny worker’s rights to bargain collectively.

Respectfully submitted,

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