

ATTACHMENT TO EMPLOYER'S STATEMENT OF POSITION

Fordham University, Case No. 2-RC-195101

March 29, 2017

ITEM 3A AND ITEM 3B

The following classifications or other employee groupings should be excluded from the petitioned-for unit, based on the contentions outlined below:

- Full-time, non-tenure track faculty in the putative unit, as they do not share a community of interest with part-time non-tenure track faculty.
- Law school faculty: The full-time and part-time non-tenure track law school faculty do not share a sufficient community of interest with the petitioned-for unit.
- Temporary and/or casual employees: Part-time adjunct faculty who do not work for more than one semester, or who do not teach two (2) courses per semester, are temporary and/or casual employees, and, therefore, do not share a sufficient community of interest with the petitioned-for unit.
- Managerial employees: The petitioned-for unit includes managerial employees which, by Board policy, must be excluded from the petitioned-for unit.
- Clinical employees: Clinical faculty at the School of Law, Graduate School of Social Service, and Graduate School of Education do not share a sufficient community of interest with the petitioned-for unit.
- Visiting Professors: Visiting professors do not share a sufficient community of interest with the petitioned-for unit
- Artists and writers in residence: Artists and writers in residence do not share a sufficient community of interest with the petitioned-for unit.
- Postdoctoral teaching fellows: Postdoctoral teaching fellows do not share a sufficient community of interest with the petitioned- for unit
- Lecturers: Lecturers do not share a sufficient community of interest with the petitioned-for unit.
- Non-tenure track graduate education faculty: Non- tenure track graduate education faculty do not share a sufficient community of interest with the petitioned- for unit.
- Non-tenure track graduate social service faculty: Non- tenure track graduate social services faculty do not share a sufficient community of interest with the petitioned-for unit.
- Non-Tenure track Gabelli school faculty both at graduate and undergraduate level. Non-tenure track Gabelli school faculty do not share a sufficient community of interest with the petitioned-

for unit.

The exclusion of various theology and religious studies faculty from the petitioned-for unit is appropriate, under either the incorrectly decided *Pacific Lutheran* decision or under the law immediately preceding *Pacific Lutheran*. Notwithstanding, those faculty share an overwhelming community of interest with the petitioned-for unit – to wit, the provision of a Jesuit Catholic education to students pursuing higher learning. The strength of this community of interest in imparting a Jesuit Catholic education to Fordham’s students is further evidence of the impropriety of the NLRB exerting state power over Fordham’s religious freedoms.

ITEM 6

- The petition calls upon the Board to exert state power to regulate and interfere with religious freedom, liberties and beliefs, in violation of the First Amendment to the U.S. Constitution, and the caselaw as set forth in *NLRB v. The Catholic Bishop of Chicago*, 440 U.S. 490 (1979), and as further defined in *University of Great Falls v. NLRB*, 278 F. 3d. 1335 (D.C. Cir. 2002).
- The decision in *Pacific Lutheran University*, 361 NLRB No. 157 (2014), was incorrect as to both the issue of religious institutions as well as determinations of managerial status.
- The NLRB has no, and/or should refrain from asserting, jurisdiction over Fordham University as a self-identified religious university.
- The NLRB’s “expedited election rules” result in a denial of due process to the Employer by prohibiting an adequate opportunity to investigate and identify significant and important issues underlying the representation petition.
- The NLRB’s “expedited election rules” interfere with the Section 7 rights of the Employer’s employees.
- To the extent that the Region or Board relies, or intends to rely, on any actions of the General Counsel between January 2011 and October 2013, such reliance is inappropriate under the U.S. Supreme Court decision in *NLRB v. SW General Inc.*

ITEM 8

If the Regional Director directs an election and overrules the Employer’s arguments, only those who should be included within the unit are: non-tenure track, non-clinical, non-temporary or casual, part-time faculty who do not provide services in the Gabelli School of Business, Fordham University School of Law, or who do not provide service in the areas of Graduate Education and/or Graduate Social Service. Those eligible to vote would be those who held an appointment in both the Spring, 2017 and Fall, 2016, and who taught two (2) courses per semester. The election should be a mail ballot election to maximize the participation of putative bargaining unit members, as it would facilitate targeting the actual voters in any prospective unit.