NLRB Expands Rights of Faculty Members to Unionize

DECEMBER 22, 2014

On December 16, 2014, the NLRB issued a significant decision in the matter of Pacific Lutheran University and Service Employees International Union, Local 925, Case No. 19-RC-102521, through which it altered the "analytical framework" to determine whether faculty members are managerial (and thus not protected in their right to unionize) or non-managerial (and thus eligible to form unions). Under this new framework, the NLRB will assess faculty participation in decision making in the following areas: academic programs, enrollment management, finances, academic policies and personnel policies. Absent a showing that faculty "actually or effectively exercise control over decision making" in these areas, the NLRB will view the faculty members as non-managerial employees; indeed, in Pacific Lutheran the NLRB decided that 39 full-time, non-tenured faculty members were not managerial employees and therefore were eligible to be included in the union. This decision potentially could open the door to a new, or renewed, wave of union organizing activity on campus.

Client Tip: *The Pacific Lutheran decision (important also because of the NLRB's ruling with respect to its jurisdiction over religious institutions) likely will be subject to additional review in the courts. As the case continues to unfold, however, colleges and universities should prepare for a spike in union organizing activity among faculty members and develop strategies to address this activity.*

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