NLRB

USC Adjuncts Aren't Managers, Can Form Union, NLRB Says

Adjunct faculty at the University of Southern California's school of art do not have management responsibilities, so they have a right to join a union, according to an NLRB decision.

The decision puts USC in good company: Two other schools—the Minnesota College of Art and Design and Seattle University—were on the losing side of that argument in the last year. That's according to William A. Herbert, executive director of the National Center for the Study of Collective Bargaining in Higher Education at Hunter College of the City University of New York.

It's difficult for universities to prove professors are managers, Herbert told Bloomberg BNA Jan. 4.

To be considered managers, faculty members must have actual control over academic programs or have their recommendations about programs be largely accepted by school administrators, Herbert said, citing Pacific Lutheran University, 361 NLRB No. 157 (2014).

The National Labor Relations Board voted 2-1 Dec. 30 to uphold a regional director's December 2015 decision that adjunct faculty at USC's Roski School of Art and Design aren't considered managerial employees.

Mark Gaston Pearce, the NLRB chairman, and member Lauren McFerran were in the majority.

University Looks to Appeal. NLRB member Philip A. Miscimarra dissented from the decision. He argued there were multiple instances where the USC faculty held decision-making power.

Miscimarra pointed to the USC University Committee on Curriculum, which he described as "the all-faculty body that must approve every course offered for credit, every proposed new or modified program consisting of those courses, and every major or minor or new degree offered by USC." The provost has the final say on those recommendations, but once they are approved they become part of the school's curriculum.

"The Regional Director dismissed this evidence on the basis that 'it is not clear what kind of review is conducted,'" Miscimarra said in his dissent.

The labor board is putting "unrealistic burdens on parties to demonstrate the existence of control," on employees that should be considered managerial under the Yeshiva University decision, he said.

"Member Miscimarra's very thoughtful dissent details several ways in which the majority's decision departs from controlling Supreme Court precedent," J. Al Latham Jr., outside counsel for USC, said in a statement sent to Bloomberg BNA Jan. 4. "It is likely that a federal court of appeals will have the final say."

Decision Called an Important Victory. Service Employees International Union Local 721 called the decision another important victory for the USC faculty.

"Faculty in the Roski School have been clear in their demand for a strong, collective voice in the decisions affecting their work and their livelihoods, and the Board's decision clears the way for faculty to begin the process of bargaining a contract that raises standards for themselves and the students they teach," Bob Schoonover, president of Local 721, said in a statement sent to Bloomberg BNA Jan. 4.

USC faculty have been organizing since early 2015 and voted 31-6 to join Local 721 in February 2016. Despite the victory, the university have been appealing to the NLRB that the faculty should not be able to form a union, Local 721 representatives said.

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