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The Second Circuit Affirms That Facts Are Key in Ministerial Exception Analysis

On July 14, the Second Circuit demonstrated once again that the factual record established by religious organizations — emphasizing the importance of religious duties in employment positions early and often — can make all the difference in whether positions will be considered occupied by “ministers.” This case was reviewed when the trial court in New York ruled for the Archdiocese.

This decision, Fratello v. Archdiocese of N.Y., No. 16-1271, 2017 WL 2989706 (2d Cir. July 14, 2017), was the first occasion for the Second Circuit to consider the ministerial exception to anti-discrimination rules since the United States Supreme Court’s game-changing 2012 decision in Hosanna-Tabor Lutheran Church & School v. EEOC. In Fratello, the Second Circuit recognized that the Supreme Court’s analysis “instructs only as to what we *might* take into account as relevant, including the four considerations on which it relies; it neither limits the inquiry to those considerations nor requires their application in every case.”

The Second Circuit nonetheless focused its analysis on the four considerations laid out in Hosanna-Tabor: (1) the teacher’s “formal title,” (2) “the substance reflected in that title,” (3) the teacher’s “own use of that title” and (4) the “important religious functions” the teacher served for the school. Just as the district court had, the Second Circuit carefully considered the record developed by the school, including the emphasis on religion in the school’s mission statement and the position’s job description, required qualifications, contract, job functions and evaluation procedure. The Second Circuit noted that the first Hosanna-Tabor consideration weighed against the application of the ministerial exception, as the principal was explicitly labeled a “lay principal.” Yet the substance reflected in that title weighed slightly in favor of applying the exception, since the principal’s job description required religious duties and qualifications. The principal’s use of the title also weighed in favor of the exception, as the record demonstrated that she was advised of and understood from the outset of her employment relationship that her role included religious responsibilities. The Second Circuit found the fourth consideration, the functions performed by the principal, to be the most important. This consideration weighed strongly in favor of applying the exception based on the many religious duties the principal performed, including managing the school’s religious education program, leading prayers and spreading religious messages in the school’s newsletter and yearbook. Moreover, the Second Circuit emphasized

that the principal’s abilities as a religious leader factored into her performance evaluations.

The decision serves as an important reminder to religious institutions that may want to rely on the protections of the ministerial exception that the burden is on them to create a record justifying its application. Like the school in *Fratello*, institutions can tailor their mission statements, employment contracts, job descriptions and performance evaluations around their religious purpose and the specific positions. What matters most, in our view, is that an organization’s personnel policies as applied to the individual demonstrate the vital connections between the position of ministry and the mission of the religious body.



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