

October 4, 2024

Dear Chatham Faculty United Organizing Committee,

On September 24, 2024, the Chatham University Board of Trustees (“Board”) received your letter asking the Board to “end the NLRB hearings and allow faculty to have a free and fair election.” We certainly respect the right of faculty to express their opinions, including about the ongoing hearing at the National Labor Relations Board (“NLRB”). That said, we are committed to continuing the NLRB legal process and are disappointed that the letter misrepresents various issues related to the hearings.

As a Board, we support Chatham University’s mission of preparing students to build lives of purpose, value, and fulfilling work. A mission that the faculty are an integral part of furthering through their long-held various administrative, managerial, and supervisory roles. In other words, faculty are partners in creating a supportive and inclusive learning, living, and working environment for all Chatham community members.

This is why, as a legal matter, Chatham University continues to maintain that the faculty in the unit that has been proposed by the American Federation of Teachers Pennsylvania (“AFT-PA”) is not appropriate under the National Labor Relations Act (“NLRA”). As the AFT-PA knows, the Supreme Court has long held that faculty who share authority with a university’s administration do not have the right to organize because they are managerial. *See NLRB v. Yeshiva University*, 444 U.S. 672 (1980). This legal precedent has been the law for decades, and there is good reason: if the faculty body is already part of the decision-making infrastructure (as they are at Chatham), unionizing can create a conflict of interest and divide the loyalties of the university’s representatives. This type of conflict also arises if individual supervisors and managers are included in a proposed unit, as AFT-PA seeks to do here.

When legal issues arise about a proposed unit, the NLRB is the government agency that engages in the initial fact-finding. Because the NLRB must assess fundamental legal issues about the appropriateness of the AFT-PA’s proposed unit, Chatham cannot simply “end” the hearing. While these legal processes can take time, it is important that the NLRB develop a robust evidentiary record so that the NLRB and the courts are able to apply the law the way the Supreme Court intended. We did not ask for the AFT-PA to choose our institution as a test case to challenge the Supreme Court’s decision in *Yeshiva* and its progeny, and we will not be coerced into conceding to the union’s demands to end a legal process when we believe that the AFT-PA is wrong on the law and wrong about Chatham.

We firmly believe that the way in which faculty viewpoints and decision-making are woven into the fabric of our institution illustrates the strength of the shared governance system that has existed for decades at Chatham. Highlighting just a few key examples, faculty lead the various academic departments and programs as department chairs, program directors, associate program directors, and associate department chairs. Faculty lead and comprise various faculty committees that make important decisions about faculty promotions and tenure, academic policies and curriculum, research grants and sabbaticals, and more. Faculty meet as an entire body multiple times a year to discuss and vote on important initiatives that directly affect the student community that we serve. And, faculty make decisions and recommendations that affect student admissions and scholarships. Of course, we cannot list

all of the important ways that faculty manage the operations of Chatham, but suffice to say, faculty play an invaluable role in how the university functions.

Turning to some of the allegations in the letter, it is just untrue that Chatham University's legal representatives have chosen "the most laborious, time-consuming, and expensive strategy at their disposal." To the contrary, the NLRB ordered "specific, detailed" testimony about the individual faculty members with various administrative, managerial, and supervisory roles. Chatham favored a potential stipulation that would have allowed the consolidation of testimony (e.g., testimony about the duties and responsibilities of one program director could apply to all program directors), but AFT-PA's counsel opposed any such stipulation. This required Chatham to continue presenting evidence of each individual's supervisory and/or managerial status for the record. It is disingenuous to blame Chatham's counsel for complying with the NLRB's order when AFT-PA's counsel refused the option of mutual stipulations to shorten the hearing.

This refusal to stipulate was not the only way AFT-PA's attorneys, who also represent the Chatham Faculty United Organizing Committee, have caused significant and lengthy delays in this legal process. As can be seen in the official transcripts, AFT-PA's counsel has frequently mounted lengthy objections to evidence that is considered standard in these types of proceedings (such as organizational charts, job descriptions, performance evaluations, faculty committee meeting minutes, etc.), which exhibits were ultimately received into the record despite AFT-PA's counsel's multiple attempts to exclude relevant evidence on the managerial and/or supervisory status of various faculty positions. Counsel for AFT-PA has frequently objected to standard questions and testimony, resulting in unwarranted delays. These types of proceedings are supposed to be less formal because the focus is on gathering all the relevant facts. Yet, AFT-PA has tried to prevent relevant facts from entering the record. If AFT-PA truly believed it was in the right on the managerial status of the faculty, then its counsel would not have aggressively opposed practically every exhibit that Chatham sought to introduce into the hearing.

Now, after 32 days of hearing and after Chatham has finished introducing initial testimony and evidence, we are being asked for the fact-finding process to abruptly end. Is that because, at this stage of the proceedings, there is significant evidence in the record supporting the fact that faculty not only have a voice in university affairs but exercise significant shared authority for academic-related decision-making? There is also significant evidence that various faculty members in roles such as department chairs and program directors are supervisors, which means they cannot be in a bargaining unit represented by a union; in fact, faculty witnesses have acknowledged that department chairs are supervisors. Yet, AFT-PA still contends that department chairs and program directors are not supervisors, subjecting this issue to continued litigation.

The letter also referenced other universities with unionized faculty members. However, those universities are not Chatham and, in our view, are not comparable. University of Pittsburgh, for example, is a public university, and thus falls under Pennsylvania state law, and not the NLRA. There are different legal standards that apply to faculty at public universities. With respect to Robert Morris University, we understand that the faculty there organized before the Supreme Court's decision in *Yeshiva*. Again, a different legal standard applied. Finally, with respect to Point Park University, there was never a final legal decision issued in that case, even though it proceeded through the NLRB process for over a decade. Overall, we do not believe comparing Chatham to other schools (such as public universities subject to

different legal standards) takes into account all the various ways in which Chatham stands apart under applicable law.

In closing, Chatham's faculty are not only educators, they are partners of the university who play important administrative and managerial roles. Faculty determine what courses are taught and by whom. Faculty determine major, minor, and certificate requirements. Faculty determine our academic policies. Faculty led the return of tenure to Chatham and determine who among them qualifies for tenure, promotions, and sabbaticals. Faculty make hiring decisions about other faculty and adjuncts. Faculty are at the core of Chatham University, and Chatham relies on individual faculty, faculty committees, and the faculty body to make decisions and recommendations about providing the best education to our students. By standing firm with the Supreme Court's decision in *Yeshiva* and other applicable case law, we defend Chatham's shared governance structure, which is industrially unique to academia, and, therefore, the University will continue to see the legal process through.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kent McElhattan", with a stylized flourish at the end.

Kent McElhattan,
Chair, Board of Trustees