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NLRB Asserts Jurisdiction Over a Charter School in New York

For the first time in New York State, a Regional Director for the National Labor Relations Board (NLRB) has asserted NLRB jurisdiction over a New York charter school, and ordered an election for a unit of approximately 35 teachers at the school. The decision, *Hyde Leadership Charter School Brooklyn*, Case No. 29-RM-126444, preempts the New York Public Employment Relations Board (PERB) from asserting jurisdiction, and conflicts with prior PERB decisions holding that charter schools are public entities for labor relations purposes.

The *Hyde Leadership* decision involved a representation petition for teachers at a charter school in Brooklyn, New York. On April 14, 2014, the United Federation of Teachers, Local 2 (the "Union"), filed a petition with PERB seeking certification for a unit of approximately 35 teachers at the school. That same day, the school filed a representation petition with the NLRB seeking an election for the same unit of employees. Because the National Labor Relations Act excludes "any state or political subdivision thereof," the NLRB was tasked with deciding the public or private nature of the charter school.

To establish jurisdiction over the Hyde Leadership school, the NLRB would have to determine that the school was not a "political subdivision" of the state under the Supreme Court's standard set forth in its *NLRB v. Natural Gas Utility District of Hawkins County* decision. Under the *Hawkins County* decision, an entity is a political subdivision if it is created directly by state so as to constitute a department or administrative arm of the government, or if it is administered by individuals who are responsible to public officials or to the general electorate.

Applying the *Hawkins County* standard to the Hyde Leadership school, the NLRB acknowledged the blend of public and private characteristics embedded in New York charter schools and the New York State Charter Schools Act (Charter Schools Act). Factors suggesting a public character include: the Board of Regents, a public entity, issues the charter and can revoke the charter upon discovering certain problems such as fiscal mismanagement; the school is funded almost entirely with public funds; the language of the Charter Schools Act refers to charter schools as independent and autonomous public schools and states that charter school employees are public employees for purposes of New York's public employment relations law; the charter schools are subject to certain public officers laws; and New York City charter schools are subject to audit by the city comptroller.



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However, factors suggesting a private character include: private individuals create and submit the charter agreement for approval (although this can optionally be done in conjunction with a public entity); except for laws specified in the Charter Schools Act, the charter schools are exempt from “all other laws and regulations governing public or private schools”; the charter schools are non-public for designation of textbooks, health services, student transportation, and other services; charter school employees are employees of the “education corporation” that runs the charter school, not the public school district; and there is no requirement that the board of directors for the charter schools be appointed or elected by any public entity or include any public officials.

The Regional Director weighed the factors and concluded that the Hyde Leadership school was not a political subdivision under the *Hawkins County* test and therefore was subject to NLRB jurisdiction. Specifically, the Regional Director held that the charter school was not “created by the state” because private individuals applied to establish the charter school, and it was not an “administrative arm of the government” because the governance and control of the charter school “vested solely in the private incorporators” rather than in the public entities. Moreover, the school was not administered by individuals who are responsible to public officials or the general electorate, as none of the school’s governing trustees are appointed by public officials.

Accordingly, the Regional Director asserted NLRB jurisdiction over the school and directed an election. Although this does not establish a “bright line” rule that all New York charter schools will necessarily be subject to NLRB jurisdiction (and the Union may still challenge the Regional Director’s decision), the factors that contributed to the holding are largely statutory, and may compel a similar conclusion for other charter schools in New York.

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