

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

LOS ANGELES LEADERSHIP ACADEMY

Employer/Petitioner

and

Case No. 31-RM-1281

LOS ANGELES LEADERSHIP ACADEMY  
COMMUNITY UNITED, CTA/NEA,

Union

CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD

Intervenor

**DECISION AND ORDER**

I. INTRODUCTION AND PRELIMINARY FINDINGS

The Los Angeles Leadership Academy (“Academy”) filed the instant RM petition under Section 9(c) of the National Labor Relations Act, as amended (“Act”) after the Los Angeles Leadership Academy Community United, CTA/NEA (“Union”) filed a representation petition with the California Public Employment Relations Board (“PERB”)<sup>1</sup> seeking to represent a unit of teachers and other certificated employees.

The Academy, a charter school, contends it is a private employer subject to the Act’s coverage. The Union and PERB contend that the Academy is exempt from the Act’s coverage because it is a political subdivision of the state of California. For the most part, the facts are not in dispute. The Academy has been operating as a charter school pursuant to the California Charter Schools Act of 1992 (“CSA”) (Cal. Educ. Code §

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<sup>1</sup> I granted PERB’s motion to intervene for limited jurisdictional purposes only. PERB administers California’s public employee labor relations laws, including the Educational Employment Relations Act, Cal. Gov. Code §3540, *et seq.*, which applies to the labor relations of public school districts in California.

47600 *et seq.*) since approval of its petition, in 2002, by the Los Angeles Unified School District (“LAUSD” or “District”). Thus, the sole issue here is whether, pursuant to Section 2(2) of the Act, the National Labor Relations Board (“Board”) has jurisdiction over the Academy. Resolution of this issue is a mixed question of law and fact. At the hearing, the parties submitted evidence pertaining to the nature of the Academy, the manner in which it was created, how it operates, and the extent of the District’s regulation and oversight over its operations. For the reasons set forth below, I have concluded that the Academy is a political subdivision exempt from coverage of the Act within the meaning of Section 2(2) and, therefore, I shall dismiss the petition.

A hearing was held before a hearing officer of the Board. The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Upon the entire record in this proceeding, I find:

A. Hearing Officer Rulings: the hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

B. Jurisdiction: with regard to commerce jurisdiction only, the parties stipulated that the Academy is a non-profit corporation that is engaged in the operation of a charter school in Los Angeles, California. During the past 12 months, a representative period, the Academy derived gross revenues in excess of \$1,000,000. During the same period, the Academy purchased and received goods, valued in excess of \$50,000 that were shipped directly to its facility from points located outside the state of California. Thus, notwithstanding my conclusion that the Academy is exempt from the Board’s jurisdiction, I find that it is otherwise engaged in commerce within the meaning of the Act.

C. Labor Organization: the parties stipulated and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act, and claims to represent certain employees of the Academy.

D. Question Concerning Representation: as more fully discussed below, while a question concerning the representation of certain employees of the Academy may exist, said question falls outside the statutory authority of the Board.

## II. FACTS AND ANALYSIS

The narrow issue presented here is whether the Academy is a “political subdivision” of the state of California. If, as the Union and Intervenor contend, it is, then the Board does not have jurisdiction over the Employer and must dismiss the instant petition. Section 2(2) of the Act reads in pertinent part: “The term ‘employer’ includes any person acting as an agent of an employer, directly or indirectly, but shall not include . . . any State or political subdivision thereof. . . .”

While neither the Act nor its legislative history supplies the meaning of the term “political subdivision,” in *NLRB v. Natural Gas Utility District of Hawkins County, Tennessee*, 402 U.S. 600 (1971), the Supreme Court of the United States adopted the Board’s definition. Thus, an entity is a political subdivision and exempt from the Act’s coverage if it is either: 1) created directly by the state so as to constitute a department or administrative arm of the government; or 2) administered by individuals who are responsible to public officials or to the general electorate. *Id.* at 604-605. The record establishes, and I find, that the Academy meets both prongs of the *Hawkins*’ test. For clarity, this analysis addresses each prong of the *Hawkins*’ test in separate sections. Many of the facts presented at the hearing, however, are relevant to both prongs of the *Hawkins*’ test. Thus, to the extent that a factor described in my analysis of the first *Hawkins*’ prong is also relevant to analysis of the second prong, it has been considered as such, though I have not repeated its discussion.

In *Hawkins*, the Supreme Court found that federal, not state, law is controlling in determining whether an entity is a political subdivision; nonetheless, the Supreme Court agreed with the Board that state law must be given “careful consideration.” *Id.* at 602. Indeed, subsequent to *Hawkins*, several Board decisions have found a state’s characterization and statutory scheme to be important, if not decisive, factors in determining whether an entity is a political subdivision. *Hinds County Human Resources Agency*, 331 NLRB 1404 (2000) (citations omitted). In this regard, the Board looks to the state’s enabling legislation or intent to determine whether an employer is exempt from Section 2(2) of the Act. *Research Foundation of the City University of New York*, 337 NLRB 965, 968 (2002).

A. The Academy is a Statutorily Created Public Charter School

1. State Approval of the Academy's Charter

“[E]ducation is perhaps the most important function of state and local governments” *Brown v. Board of Education*, 347 U.S. 483, 493 (1954). The California Constitution recognizes the importance of education: Article 9, § 5 of the California Constitution provides: “The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year a school has been established.” Article 9, § 6 of the California Constitution states in pertinent part: “No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System.” Further, Article 9, § 8 of the California Constitution reads in relevant part: “*No public money shall ever be appropriated for the support of . . . any school not under the exclusive control of the officers of the public schools. . . .*” (emphasis supplied). The California Constitution provides for the election of a superintendent of public instruction who serves as the chief executive of the California Department of Education and is responsible to the people of California. Cal. Const. Art. 9, §2. So too, the California Constitution provides for the election of county superintendents of schools who are also accountable to the electorate. Cal. Const. Art. 9, §3.

The California public school system is immense. There are about 1000 public school districts in the state of California. There are 57 county offices of education. And, of course, there is the state's Department of Education. In 1992, the California legislature passed the CSA in order to improve the public school system. Currently, there are approximately 600 active charter schools registered in California.<sup>2</sup> The CSA prohibits any pre-existing, private school (sectarian or non-sectarian) from obtaining a charter. The only way for an independent developer to open and operate a charter school is to have his

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<sup>2</sup> The record reflects that, since the enactment of the Charter Schools Act of 1992, about 750 charter schools have been authorized; however, not all remain active. According to the California Department of Education, 41 charter schools have had their charters revoked.

charter approved by a chartering authority pursuant to the CSA. The CSA is the foundation of all charter schools; it establishes the rights and obligations of its operators, personnel and pupils. The CSA serves as a roadmap for charter schools for it reflects the state's intent, provides for public funding, and governmental oversight.

The declared purpose of the state legislature for enacting the CSA was “to provide opportunities for teachers, parents, pupils and community members to establish and maintain schools that operate independently of the existing school district structure. . . .” The legislature hoped to invigorate a failing system as well as offer meaningful alternatives to those it was failing. Specific objectives addressed by the CSA are “expanded choices in the types of educational opportunities that are available within the public school system [,]” and “vigorous competition within the public school system to stimulate continual improvements in all public schools.” CSA, §47601. The California legislature unequivocally declared its intent that “Charter schools are part of the Public School System, as defined in Article 9 of the California Constitution.”<sup>3</sup>

Roger Lowenstein (“Mr. Lowenstein”) is a founder of the Academy and its executive director. In January 2001, Mr. Lowenstein and his co-founder began the process of establishing an independent public charter school.<sup>4</sup> Pursuant to CSA, in order to operate a charter school, its developers must submit a petition for approval to a chartering authority. Three state entities may serve as chartering authorities: the state Board of Education, a county Office of Education, and the school district in which the charter school

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<sup>3</sup> In *Wilson v. State Board of Education*, 75 Cal. App. 4<sup>th</sup> 1125 (1999) (review denied, Cal. Supreme Court Minute 01-25-2000), the court rejected appellants' facial challenge to the constitutionality of the CSA. Therein, the court stated, “Appellants confuse the delegation of certain educational functions with the delegation of the public school system itself.” In *Wilson*, the court found that “charter schools are *strictly* creatures of statute. From how charter schools come into being, to who attends and who can teach, to how they are governed and structured, to funding, accountability and evaluation—the Legislature has plotted all aspects of their existence. Having created the charter school approach, the Legislature can refine it and expand, reduce or abolish charter schools altogether.” (emphasis in the original). Furthermore, the *Wilson* court found that officers of the public schools retained “exclusive control” over charter schools based on their power to issue and revoke charters and their oversight responsibilities.

<sup>4</sup> There are three types of charter schools: an entire district becomes a charter district; a previously traditional public school converts to a charter school and, the third, an independent charter that starts as a charter school. The Academy is the third type of charter school.

will be located. Mr. Lowenstein decided to submit a charter petition to the LAUSD<sup>5</sup> because the Academy would operate within its geographical area.<sup>6</sup> The Academy would provide children in grades 6 through 12 with educational opportunities<sup>7</sup> that were not available in LAUSD's traditional schools, where students were consistently performing at low-levels. Specifically, the Academy would offer smaller classes, project-based educational experiences and establish partnerships between the school and students' families.

Mr. Lowenstein and his co-founder dealt with LAUSD's charter schools' office, an office that functions as the liaison between charter school applicants/operators and the District's intricate administration. LAUSD required the Academy to prepare its charter petition in conformity with a LAUSD template. In order for it to be approved, a charter petition must address 16 elements required by the CSA, including: a description of the school's educational program; measurable pupil outcomes; methods to measure student progress; the school's governance structure; the staff's qualifications; health and safety procedures; diversity goals; admission requirements; annual audits to be submitted to the chartering authority; disciplinary procedures; employee pension options; available alternative public schools; employees' seniority and return rights; dispute resolution procedures; labor relations—specifically, a declaration that the charter school shall be the exclusive public school employer of its employees; and closure procedures, including final audits, disposition of net assets, maintenance and transfer of pupils' records to other public schools.

On about January 31, 2001, the Academy submitted a first draft of its charter petition to LAUSD. From the time of the charter petition's initial submission to its final approval by LAUSD, the Academy's charter petition was examined by 15 different District offices—all responsible for insuring that the charter petition conformed to the requirements of the CSA. During its review process, LAUSD remanded the charter petition

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<sup>5</sup> The record contains two petitions, a first draft (U Ex. 2) and a final approved draft (ER Ex. 4). All references herein are to the final approved charter.

<sup>6</sup> The Academy is located in the Westlake district, southeast of downtown Los Angeles. The Academy's student body is predominantly latino, reflecting the demographic makeup of the local community. Per its charter, the Academy has outreach programs for the African American population of neighboring south central Los Angeles.

<sup>7</sup> The Academy would start up with an entering class of 120 students in the sixth and seventh grades, adding a grade each year until students graduated from the twelfth grade.

about six times to the Academy for required revisions and clarifications, many of which related to the curriculum of the Academy's high school.<sup>8</sup> Additionally, as required under the CSA, the LAUSD was required to hold a public meeting before approving the Academy's petition. On March 12, 2002, LAUSD finally approved the Academy's charter petition for a five-year term, the maximum time permitted under the CSA.

2. The Academy is Incorporated as a Nonprofit Public Benefit Corporation

While its charter petition was still subject to the LAUSD approval process, as provided by the CSA (Cal. Educ. Code § 47604(a)), Mr. Lowenstein the Academy incorporated as a nonprofit public benefit corporation. The Academy's articles of incorporation declare that its "specific purposes. . . are to organize and operate . . . a public school." Concomitantly, the Academy obtained exemption from federal income tax under 26 USCA 501(c) (3). The Internal Revenue Service granted the Academy's application based on its declaration.

3. The Academy's Operation Adheres to a Statutory Scheme

Pursuant to the CSA, in order to receive its charter, the Academy was required to elect to be the "exclusive public school employer of its employees for purposes of collective bargaining." Absent such election, Mr. Lowenstein understood that the Academy would be part of and bound by LAUSD's collective bargaining processes. The Academy's charter provides: "The L.A. Leadership Academy shall be deemed the exclusive public school employee [sic] of the employees of the L.A. Leadership Academy for collective bargaining purposes under the Education Employment Relation [sic] Act (EERA). The scope of representation shall include discipline and dismissal of charter school employees."

In order to assure compliance with constitutional concerns, the CSA prohibits private schools from becoming charter schools.<sup>9</sup> Pursuant to the CSA, charter schools,

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<sup>8</sup> Notwithstanding the Academy's plan to operate only two grades initially, the LAUSD required the Academy's charter petition to describe the curriculum it would offer to all grades during the five-year term of its charter.

<sup>9</sup> Charter schools are prohibited from receiving any public funds for a student who also attends a private school that charges tuition.

including the Academy, cannot charge tuition and must admit all applicants who reside in the district. If there are more applicants than available slots, admission will be based on a public random drawing. The Academy is non-sectarian and not allowed to engage indirectly or directly in religious teaching.<sup>10</sup>

#### 4. The Academy Receives the Majority of its Funds from the State

Just like a public school district, a public charter school receives most of its revenue from the state's general fund based on an average daily attendance formula ("ADA").<sup>11</sup> The Academy was not eligible for ADA funding until its doors were actually opened and students in attendance. Mr. Lowenstein supplied the Academy's initial capital from his personal funds. During the year prior to receipt of its charter, the inchoate Academy received additional funding from the National Council of La Raza, the Walton Family Foundation and a competitive grant of \$50,000 from the California Department of Education. In April 2002, the California Department of Education awarded the Academy a public charter school start-up grant of \$450,000.<sup>12</sup> LAUSD was the Academy's joint applicant and authorized agent.

The Academy opened its doors to students in September 2002. Whereupon, pursuant to the CSA, it was able to receive several types of public school funding: general-purpose entitlement which is based on ADA; charter school categorical block grants,<sup>13</sup> and funds provided in lieu of Economic Impact Aid.<sup>14</sup> As the Academy's student body, grade levels, and special education programs expanded, so too have its funding levels from these principal sources, as well as funds from the California state lottery. The Acad-

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<sup>10</sup> The record reveals that LAUSD recently censured another charter school for purportedly advancing religious or spiritual practices.

<sup>11</sup> ADA is calculated by the total number of days of student attendance divided by the total number of days in the regular school year. Like traditional public schools, a public charter school is required to provide a certain amount of school days/hours of instruction.

<sup>12</sup> The transcript at page 122 contains a transcription error that is hereby corrected: \$4520,000.00 to \$450,000.00.

<sup>13</sup> Categorical aid consists of funds from the state or federal government that are granted to qualifying school districts for children with special needs or for special programs. Generally, categorical aid is granted to school districts in addition to their ADA revenue limit and expenditure thereof is restricted to its particular purpose.

<sup>14</sup> Economic Impact Aid is categorical funds for school districts with concentrations of children who are transient, from low-income families, or need to learn English.

emy also receives substantial state funding for its special education programs. The Academy has received federal funds targeted for transportation of school children from failing public schools to more successful public or charter schools. Approximately 90 percent of the Academy's student body is eligible to receive state or federally subsidized school lunches.

In 2005, on a one-time-only basis, the Academy was able to borrow \$250,000 available to charter schools from the state of California. The Academy's 2005-2006 operating budget projects its total revenues at \$2,960,570, of which \$2,175,097 will come from state funds and \$315, 573 from federal funds; the balance is from private sources.<sup>15</sup>

The Academy receives additional funds allocated to public schools (including charter schools) by the state's voters. For example, pursuant to local bond measure K, the Academy received from LAUSD several hundred thousand dollars worth of computers and related equipment. LAUSD retains title to the computers and equipment; only LAUSD contractors may install and/or repair said equipment. Pursuant to local bond measure R (construction and repair bond measure for LAUSD), the Academy has applied to LAUSD for portables. The Academy intends to use the portables, better known as trailers, as classrooms while a warehouse that the Academy intends to purchase is renovated for classroom use.<sup>16</sup> Proposition 39 requires LAUSD, upon the charter school's request, to provide it with reasonably equivalent facilities to "other public schools."<sup>17</sup>

Here, I find *Hinds County Human Resources Agency*, 331 NLRB 1404 (2000), both illustrative and controlling. In *Hinds County*, the issue before the Board was whether an agency that administered low-income assistance programs in Mississippi was exempt from the Board's jurisdiction. The Board found the employer exempt from the Act's coverage under the first prong of the *Hawkins* test. (The Board did not address *Hawkins*' second prong.) In reaching its conclusion, the Board examined a number of factors but relied principally upon the language of the enabling statute, which demonstrated the leg-

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<sup>15</sup> The fact that the Academy also receives private funds is not dispositive. *NY Inst. for the Educ. of the Blind*, 254 NLRB 664, 667 (1981).

<sup>16</sup> Currently, the Academy leases two facilities, one for its middle school and one for its high school. The facilities are six blocks apart and each has its own principal.

<sup>17</sup> The record is replete with evidence—both documentary and testimonial—reflecting the Academy's belief that it is entitled to substantially more state funds than it presently receives.

islature's clear intent that local government retain control over the employer. As further evidence of the state's intent, the Board considered subsequent rulings by state entities, such as Mississippi's attorney general. In addition, the Board considered the state's significant control over the employer's funding, budgeting, and auditing. Other factors that warranted exemption were the employer tax-exempt status (the employer was exempt from federal income tax based on its 501(c) (3) status), and its employees' option of participating in the state retirement system.

In *Jervis Public Library Assn.*, 262 NLRB 1386 (1982), the employer's board of directors had the power to appoint and remove the director, approve policies and budgets. The director's responsibilities were not inconsequential. For example, he carried out most of the employer's policies, including book selection, funding requests, hiring and firing. Despite the evidence of operational autonomy, the Board refused to assert jurisdiction. The library's employees were covered under the city of Rome's health insurance plan and the state's retirement system. The library's revenue was largely derived from the city and county. The employer's budget was submitted to the city for review and approval. The Board concluded that the library was a state-authorized educational facility and an administrative arm of the state providing educational services to the public.

In *New York Institute for the Education of the Blind*, 254 NLRB 664 (1981), the employer was a residential educational facility established by the state legislature. A board composed of private citizens was responsible for the institute's labor relations. Private moneys were used to supplement salaries of certain employees and other operating expenses. The institute received funds from state and federal sources and was audited annually by the state. The institute was not permitted to charge tuition and was subject to inspection by the state's commissioner of education. Employees participated in the state's employee retirement system and health care plan. In determining that the institute was exempt from the Act's coverage, once again, the Board focused on the state's characterization of the institute as its agent and the state's constitutional mandate to provide handicapped residents with a suitable education.

In the instant case, although the Academy incorporated before its charter was approved, the record demonstrates that it incorporated with the intent to operate as a "public

school,” pursuant to the CSA.<sup>18</sup> Simply stated, the Academy did not and could not exist as a “public school” or as a “charter school” before its petition was approved by LAUSD.<sup>19</sup> Under California law, it is clear that this is the only way to establish a public charter school.<sup>20</sup> Moreover, the state has the authority to revoke or not renew the Academy’s charter. While the Academy’s founders decided to form a non-profit public benefit corporation before LAUSD approved its petition, they did so pursuant to CSA § 47604 (a). In its articles of incorporation, the Academy declared that its specific purpose was “to organize and operate the Los Angeles Leadership Academy, a public school.” Pursuant to this specific declaration, the Internal Revenue Service granted the Academy tax exempt status as a Section 501 (c) (3) organization. Mr. Lowenstein acknowledged that the Academy needed LAUSD to approve its charter in order to operate. Moreover, such approval was necessary for the Academy to receive significant government funding.

Pursuant to the CSA, the Academy’s teachers must possess a valid California credential. While teachers at private schools may be credentialed by the state, this is not a statutory requirement. The fact that the Academy makes its own personnel decisions with regard to hiring and firing does little to persuade me that it is a private employer. *New*

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<sup>18</sup> The Academy’s reliance on *St. Paul Ramsey Med. Center*, 291 NLRB 755 (1988) is misplaced. In *Ramsey*, the Board found that, due to changes in the state’s legislation, the state no longer intended for the employer to be established as a department or administrative arm of the government. Here, California, in the CSA and subsequent court decisions, has clearly demonstrated its intention to establish public charter schools as administrative arms of its public school system. Moreover, in *Ramsey* the employer’s employees were specifically excluded from coverage of the state’s public employment relations act and state public employees retirement act. The Academy’s teachers are subject to both as evidenced by the enabling legislation and the Academy’s charter.

So too, the facts of *Research Found. of the City Univ. of NY*, 337 NLRB 965 (2002) are disguisable from the facts of the instant case. In *Research Found.*, the Board found that there was no enabling legislation describing the employer. While the employer had a charter, nothing therein specified that the employer was to operate under the City University’s control or oversight. Rather, the employer had operated for more than 40 years as a private corporation and had not received publicly appropriated funds for its services.

<sup>19</sup> The Academy cites *Cape Girardeau Care Center, Inc.*, 278 NLRB 1018 (1986), to support its argument that since the Academy incorporated before LAUSD approved its charter, it could not have been created by the state. The facts of *Cape Girardeau* are not analogous to those presented here. In *Cape Girardeau*, one month after the employer incorporated, the county passed a resolution approving its formation. Such action hardly rises to the level of the CSA, the enactment of which preceded the Academy’s incorporation by ten years. The record evidence, here, establishes, beyond cavil, that from the beginning Mr. Lowenstein intended to operate a public charter school, and that he knew he would be unable to do so without approval by a chartering authority. Further, in *Cape Girardeau*, the county government provided no funds to the employer and its employees were not covered by the county’s benefit plans.

<sup>20</sup> Had LAUSD denied the Academy’s petition, pursuant to the CSA, its decision would have been subject to appeal and review by the county Office of Education or the state board of Education.

*York Institute for the Education of the Blind*. Pursuant to the CSA, the Academy’s teachers who came from traditional public schools retain their seniority and return rights thereto during the term of the Academy’s charter. Teachers and other staff members are entitled to due process rights. The Academy’s teachers are eligible to participate in California’s State Teachers Retirement Fund, a system that was created by the legislature for public school teachers.<sup>21</sup> Employee participation in a state-sponsored or created pension system is a significant indicator of statutory exemption under Section 2 (2) of the Act. *Hinds County* at 1405 (citations omitted).

B.      The Academy is Administered by Individuals  
Responsible to Public Officials

For an entity to be exempt from the Act’s coverage under the second or alternative prong of the *Hawkins*, it must be administered by individuals who are responsible to public officials or to the general electorate. *Hawkins* at 604. Here, California’s enabling legislation, the Academy’s charter and its reporting requirements dictate a finding that individuals responsible to public officials administer the Academy.<sup>22</sup>

California’s enabling legislation reads in pertinent part: “Charter schools are under the jurisdiction of the Public School System and the exclusive control of the officers of the public schools . . . .”<sup>23</sup> CSA § 47615 (a). The funding portion of the enabling legislation reads in pertinent part: “A charter school shall be deemed to be under the exclusive control of the officers of the public schools for purposes of Section 8 of Article 9

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<sup>21</sup> According to record testimony, the Academy’s teachers did not always participate in the State Teachers Retirement Fund but were covered earlier under a tax-sheltered annuity plan. IRC Section 403(b).

<sup>22</sup> Citing *Research Found.*, the Academy argues that it does not satisfy the second prong of *Hawkins* because its board of directors was not appointed by public officials. This is only one factor of the test. See *Jervis Public Library Assn. In Research Found.*, the Board stated that such appointments were a consideration only. The Board has found that in order to support a claim for exemption under *Hawkins*’ second prong, “an entity must demonstrate that its policy-making officials have ‘direct personal accountability’ to public officials or to the general public.” *Cape Girardeau* at 1019 (citations omitted). Here, the record amply reveals that the Academy’s operators are subject to a high degree of governmental oversight and have direct personal accountability to both public officials and the general electorate they serve.

<sup>23</sup>In two California appellate court decision, *Wilson, supra* at 1141, and *Ghafur v. Bernstein*, 131 Cal.App.4<sup>th</sup> 1230, 1239 (2005), charter school officials/operators, such as Mr. Lowenstein, were themselves found to be public officials because their responsibilities were similar to public school board members.

of the California Constitution, with regard to the appropriation of public moneys.” CSA §47612 (a).

1. State Oversight of the Academy’s Budget

The Academy’s financial records and budget are subject to strict control and oversight by the LAUSD. The Academy is required not only to obtain LAUSD’s approval of its projected five-year budget as a condition for approval of its chart

er, but must also submit an annual independent audit to LAUSD. Moreover, the Academy must submit to the District interim financial reports, which, in turn, go the county Board of Education and the California Department of Education. The California Constitution strictly prohibits any sectarian school or school not under the exclusive control of the officers of the public schools from receiving ADA or other public funds. LAUSD is required to monitor the Academy’s fiscal condition. Finally, as a charter school, the Academy is required to respond promptly to all inquiries pertaining to its financial records from LAUSD, the county Office of Education or the superintendent of public instruction.<sup>24</sup> Moreover, even though it did not act as the Academy’s chartering authority, the state Board of Education, upon the superintendent’s recommendation, is empowered to revoke the Academy’s charter if it discovers gross financial mismanagement, improper use of school funds, or repudiation of approved academic practices.

2. The Academy’s Reporting Requirements Demonstrate that it is Responsible to Public Officials

While the Academy has a board of directors that makes governance decisions, the Academy is not excused from many regulations and reporting requirements that apply to all public schools. In addressing the Academy’s general principles of governance, its charter states that it will comply with all laws relating to public agencies. The board of directors’ meetings are noticed and open pursuant to California’s Brown Act for public agencies. Cal. Gov’t Code § 54950 *et seq.* Currently, members of the board of directors are selected by a nominating committee and elected by the sitting board of directors. The

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<sup>24</sup> Every four years, Californians elect a superintendent of public instruction to head the state’s Department of Education.

Academy's charter requires that parents be represented on the board of directors. A non-voting space is reserved on the Employer's board for a representative of LAUSD.

The Academy's board of directors does not hire or fire. Rather, personnel are hired by committees consisting of staff, parents and teachers—subject to approval by Mr. Lowenstein. Currently, the Academy employs approximately 26 teachers. As previously stated, the Academy's teachers must hold a California teaching credential. LAUSD monitors and administers the Academy's adherence to credentialing requirements. Pursuant to the CSA, the Academy must perform a criminal background check on each teacher and provide documentation thereof to LAUSD.

The CSA encourages public charter schools to use more innovative teaching methods than traditional public schools. As such, instruction at the Academy is project-based and application oriented. Its curriculum, nonetheless, must meet the state's content standard and was subject to review by LAUSD before its charter petition was approved. The Academy prides itself on smaller classes, superior teachers, and community outreach. There is significant parental involvement in the school—whether it be voluntary or for remuneration. The Academy does not use LAUSD's "open court reading program" but selects alternative texts from a list of state-approved books. Student may not be suspended or expelled without certain due process rights. Further, prior to suspending or expelling a student, the Academy must immediately notify the District of its action and forward the student's records to another LAUSD school.

The progress of the Academy's students is monitored by testing and reporting requirements that apply to public schools. The Academy must maintain and submit attendance records for funding and accountability. Indeed, in order to comply with the state's requirements for funding and education, the Academy guaranteed, in its charter, to provide a minimum number of minutes of instruction. The Academy is subject to the federal government's educational accountability law entitled "No Child Left Behind" because it, like many public schools, accepts Title I funds. Throughout the year, the Academy is obligated to provide LAUSD with reports and surveys, including an annual performance report, which contain data pertaining to student progress, levels of parental involvement, health and safety matters, student demographic and disciplinary information, staff development, and the board of director's policy decisions. The Academy must participate in

California's standardized testing and reporting program ("STAR"), a state-wide exam and ranking of public schools referred to as the Academic Performance Index ("API"). The Academy must meet all statewide standards and conduct pupil assessments that are applicable to pupils in non-charter public schools. The chartering authority is entitled to inspect the Academy's facilities and records. Every five years the Academy is required to seek renewal of its charter; at the time of the hearing, it had begun preparing for this process.

In its charter, the Academy agreed to "be a public school for purposes of special education and [to operate] under the [LAUSD's] Special Education Local Plan (SELPA)." Therein, the Academy agreed to provide disabled children the same services and instruction as similarly situated children "who attend *another public school* of the District" (emphasis supplied). The Academy receives significant public funding for its SELPA program. As with other items and programs, the Academy's SELPA program is subject to substantial oversight by the District. For example, the Academy must input, on an LAUSD computer program, all intervention and other action taken on behalf of children with special needs. The record reflects that representatives of LAUSD conduct on-site reviews of the Academy's special education program, followed by a detailed written report that contains a mandatory and time sensitive "corrective action plan."

In view of the foregoing and based on the factors found relevant by the United States Supreme Court in *Hawkins*, many of which are present here, I conclude that the Los Angeles Leadership Academy is a political subdivision of the state of California and not an employer within the meaning of the Act. I have based my determination on both prongs of the Hawkins test, having found each one equally compelling in and of itself. As such, I find that the Academy, a public charter school, is strictly a creature of state statute so as to constitute an administrative arm of the government, and would not exist as a public charter school but for the state's enabling legislation. So too and alternatively, the record amply demonstrates that the Academy is administered by individuals who are responsible to public officials or to the general electorate.

ORDER

IT IS HEREBY ORDERED that the petition filed in this case is dismissed.

RIGHT TO REQUEST REVIEW

A request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, under the provision of Section 102.67 of the Board's Rules and Regulations. The Board in Washington must receive this request by March 16, 2006.<sup>25</sup>

DATED at Los Angeles, California this 2<sup>nd</sup> day of March, 2006.

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James J. McDermott, Regional Director  
National Labor Relations Board  
Region 31

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<sup>25</sup> In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlr.gov](http://www.nlr.gov).