

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

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| In the Matter of |) | |
| |) | |
| Pilsen Wellness Center, |) | |
| |) | |
| Employer, |) | |
| |) | |
| and |) | Case No. 13-RM-1770 |
| |) | |
| Chicago Alliance of Charter Teachers and Staff, IFT, AFT, AFL-CIO, |) | |
| |) | |
| Union. |) | |

BRIEF OF THE UNION

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BRIEF OF THE UNION

INTRODUCTION

This case is before the Board on review of a Decision and Order of the Regional Director of Region 13 finding that the Employer, an education service provider that operates a public charter school, is exempt from Board jurisdiction as a political subdivision of the State of Illinois. The Regional Director found that the Employer is a political subdivision under the second prong of *NLRB v. Natural Gas Utility District of Hawkins County, Tennessee*, 402 U.S. 600 (1971). The facts in this case demonstrate that the Employer is a political subdivision exempt from coverage under the Act within the meaning of Section 2(2) of the Act. The Board should therefore affirm the Regional Director's order dismissing the petition.

STATEMENT OF FACTS

Employer's Petition

On October 22, 2010, Pilsen Wellness Center (Employer) filed an RM petition with the Board. Board Ex. 1(a). The Employer filed such petition after the Chicago Alliance of Charter Teachers and Staff, IFT, AFT, AFL-CIO (Union), filed a majority interest representation petition with the Illinois Educational Labor Relations Board (IELRB) seeking to represent a unit of the Employer's teachers employed at the Latino Youth Alternative High School, currently located at 2001 South California Avenue, Chicago, Illinois. Jt. Ex. 1.

The Illinois Charter Schools Law

The Illinois Charter Schools Law (105 ILCS 5/27A-1, *et seq.*) was enacted in 1996 and is part of the Illinois School Code (105 ILCS 5/1-1, *et seq.*). Such law sets forth the following declaration of legislative intent:

In authorizing charter schools, it is the intent of the General Assembly to create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of educating children within the public school system. The General Assembly seeks to create opportunities within the public school system of Illinois for development of innovative and accountable teaching techniques.

105 ILCS 27A-2(c).

The Illinois Charter Schools Law provides that:

- "A charter school shall be a public, nonsectarian, nonreligious, non-home based, and non-profit school. A charter school shall be organized and operated as a nonprofit corporation or

other discrete, legal, nonprofit entity authorized under the laws of the State of Illinois.” 105 ILCS 5/27A-5(a).

- “The General Assembly does not intend to alter or amend the provisions of any court-ordered desegregation plan in effect for any school district. A charter school shall be subject to all federal and State laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, marital status, or need for special education services.” 105 ILCS 5/27A-4(a).

- “No charter shall be granted under this Article that would convert any existing private, parochial, or non-public school to a charter school.” 105 ILCS 5/27A-4(c).

- “The governing body of a charter school shall be subject to the Freedom of Information Act and the Open Meetings Act.” 105 ILCS 5/27A-5(c). The Illinois Freedom of Information Act (5 ILCS 140/1, *et seq.*) applies solely to “public bodies” in Illinois, provides that the records maintained by such public bodies are “public records,” and requires public bodies to make their records available to any requesting person for inspection and copying. 5 ILCS 140/3. The Illinois Open Meetings Act (5 ILCS 120/1, *et seq.*) applies only to “public bodies” and requires that meetings of public bodies be open to the public. 5 ILCS 120/1.02, 2.

- A charter school shall comply with all provisions of the Illinois Educational Labor Relations Act (IELRA). 105 ILCS 5/27A-5(g). The IELRA, 115 ILCS 5/1, *et seq.*, is a comprehensive public sector bargaining statute for educational employees in Illinois. Section 3 of the IELRA protects the right of educational employees to organize, join unions, and engage in concerted activity. 115 ILCS 5/3. Sections 7 and 8 of the IELRA provide for bargaining unit determinations and certification of representatives by the IELRB. 115 ILCS 5/7, 8. Section 10 of

the IELRA requires educational employers to bargain with exclusive representatives of their employees. 115 ILCS 5/10. Sections 14 and 15 of the IELRA set forth unfair labor practices and unfair labor practice procedures. 115 ILCS 5/14, 15.

- “[A] bargaining unit of charter school employees shall be separate and distinct from any bargaining units formed from employees of a school district in which the charter school is located.” 105 ILCS 5/27A-7(a)(11).

- A charter school is subject to and must comply with the provisions of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101, *et seq.*). 105 ILCS 5/27A-5(g)(3). The Local Governmental and Governmental Employees Tort Immunity Act provides immunities and defenses to “local public entities and public employees” from liability arising “from the operation of government.” 745 ILCS 10/1-101.1(a).

- “A charter school shall comply with all applicable health and safety requirements applicable to public schools under the laws of the State of Illinois.” 105 ILCS 5/27A-5(d).

- A charter school must comply with the provisions of the School Code providing for criminal history records checks and checks of the Statewide Sex Offender Database and Statewide Child Murderer and Violent Offender Against Youth Database of applicants for employment. 105 ILCS 5/27A-5(g)(1).

- Instructional employees must be certified in accordance with the School Code or possess alternative qualifications specified in the Charter Schools Law. The Law requires that specified percentages of teachers in Chicago charter schools hold teaching certificates. 105 ILCS 5/27A-10(c).

- “Enrollment in a charter school shall be open to any pupil who resides within the geographic boundaries of the area served by the local school board, provided that the board of education in a city having a population exceeding 500,000 may designate attendance boundaries” for some charter schools if it determines that such attendance boundaries “are needed to relieve overcrowding or to better serve low-income or at-risk students.” 105 ILCS 5/27A-4(d).

- “If there are more eligible applicants for enrollment in a charter school than there are spaces available, successful applicants shall be selected by a lottery.” 105 ILCS 5/27A-4(h).

- “A pupil who is suspended or expelled from a charter school shall be deemed to be suspended or expelled from the public schools of the school district in which the pupil resides.” 105 ILCS 5/27A-4(h).

- A charter school is prohibited from charging tuition except as provided in the School Code. 105 ILCS 5/27A-5(e). The School Code allows school districts to charge tuition only to non-resident pupils. 105 ILCS 5/10-20.12a.

- A charter school must comply with the provisions of the School Code regarding discipline of students in public schools. (105 ILCS 5/24-24 and 5/34-84A) 105 ILCS 5/27A-5(g)(2).

- A charter school must comply with the provisions of the Illinois School Student Records Act (105 ILCS 10/1, *et seq.*). The Illinois School Student Records Act regulates student records in public – but not private – schools. 105 ILCS 5/27A-5(g)(6).

- The charter school must comply with the provisions of the School Code requiring public schools to prepare and provide to the public school report cards showing the school’s performance as measured by State and local standards. (105 ILCS 5/10-17a) 105 ILCS 5/27A-5(g)(7).

- For purposes of the School Code provisions regarding State aid to public schools, pupils enrolled in a charter school shall be included in the pupil enrollment of the school district within which the pupil resides and the charter school shall maintain accurate daily attendance records. 105 ILCS 5/27A-11(a).

- A charter school contract is to provide for funding for the charter school that is no less than 75% and no more than 125% of the school district's per capita student tuition multiplied by the number of students residing in the district who are enrolled in the charter school. 105 ILCS 5/27A-11(b).

- A charter school is entitled to receive from a school district the proportionate share of state and federal resources generated by students with disabilities or staff serving them at the charter school. 105 ILCS 5/27A-11(c).

- A proposed charter school contract between a school district and the governing body of a charter school must be approved by the Illinois State Board of Education (State Board), and the State Board must approve any material revisions to a previously certified charter school contract. 105 ILCS 5/27A-6.

- Before a charter school can be established, a charter school proposal must be submitted to the local school board and the State Board. 105 ILCS 5/27A-7(a). Such proposal must include:
 - » the name of the proposed school (105 ILCS 5/27A-7(a)(1));
 - » the age or grade range, areas of focus, minimum and maximum numbers of pupils to be enrolled, and "any other admission criteria that would be legal if used by a school district" (105 ILCS 5/27A-7(a)(2));

» a description of and address of the physical plant in which the school will be located (105 ILCS 5/27A-7(a)(3));

» the mission statement of the charter school, “which must be consistent with the General Assembly’s declared purposes” (105 ILCS 5/27A-7(a)(4));

» the goals, objectives and pupil performance standards to be achieved by the charter school (105 ILCS 5/27A-7(a)(5));

» a description of the charter school’s educational program, pupil performance standards, curriculum, school year, school days, and hours of operation (105 ILCS 5/27A-7(a)(7));

» a description of the charter school’s plan for evaluating pupil performance, the types of assessments that will be used to measure pupil progress towards achievement of the school’s pupil performance standards, the time line for achievement of those standards, and the procedures for taking corrective action in the event that pupil performance at the charter school falls below those standards (105 ILCS 5/27A-7(a)(8));

» “[e]vidence that the terms of the charter as proposed are economically sound for both the charter school and the school district, a proposed budget for the term of the charter, [and] a description of the manner in which an annual audit of the financial and administrative operations of the charter school, including any services provided by the school district, are to be conducted” (105 ILCS 5/27A-7(a)(9));

» a description of the governance and operation of the charter school (105 ILCS 5/27A-7(a)(10));

» “[a]n explanation of the relationship that will exist between the charter school and its employees, including evidence that the terms and conditions of employment have been

addressed with affected employees and their recognized representative, if any” (105 ILCS 5/27A-7(a)(11));

- » information regarding insurance coverage (105 ILCS 5/27A-7(a)(12)); and
- » a description of how the charter school plans to meet the transportation needs of its pupils and a plan for addressing the transportation needs of low-income and at-risk pupils. 105 ILCS 5/27A-7(a)(13).

- A charter school renewal proposal must contain:
 - » a report on the progress of the charter school in achieving the goals, objectives, pupil performance standards, content standards, and other terms of the initial approved charter proposal (105 ILCS 27A-9(b)(1)); and
 - » “a financial statement that discloses the costs of administration, instruction, and other spending categories for the charter school that is understandable to the general public and that will allow comparison of those costs to other schools or other comparable organizations.” 105 ILCS 27A-9(b)(2).

- A charter may be revoked if the local school board or State Board determines that the charter school:
 - » “[c]ommitted a material violation of any of the conditions, standards, or procedures set forth in the charter (105 ILCS 27A-9(c)(1));
 - » “[f]ailed to meet or make reasonable progress toward achievement of the content standards or pupil performance standards identified in the charter (105 ILCS 27A-9(c)(2));
 - » “[f]ailed to meet generally accepted standards of fiscal management (105 ILCS 27A-9(c)(3)); or

» “[v]iolated any provision of law from which the charter school was not exempted.” 105 ILCS 27A-9(c)(4).

Other Illinois Statutory Provisions

Illinois Educational Labor Relations Act

The “governing body of a charter school established under Article 27A of the School Code” and “a subcontractor of instructional services of a ... charter school established under Article 27A of the School Code” are included within the definition of a public “educational employer” subject to the jurisdiction of the IELRB under the IELRA. 115 ILCS 5/2(a).

Illinois Pension Code

A charter school is included within the definition of an “employer” for purposes of the provisions of the Illinois Pension Code providing for a Public School Teachers’ Pension and Retirement Fund – Cities Over 500,000 Inhabitants (40 ILCS 5/17-105) and “any educational, administrative, professional, or other staff employed in a charter school operating in compliance with the Charter Schools Law who is certified under the law governing the certification of teachers” is included within the definition of “contributor, member or teacher” under such provisions (40 ILCS 5/17-106).

Illinois School Code

A charter school is included within the definition of a “school district” under provisions of the Illinois School Code defining the regulatory duties of the Illinois State Board of Education. 105 ILCS 5/2-3.25a.

Youth Connection Charter School Charter Agreement

Youth Connection Charter School (YCCS), a Section 501(c)(3) corporation, holds a charter to operate a multi-campus charter school in the City of Chicago. Tr. 125; Un. Ex. 6. YCCS has held a charter with the Chicago Public Schools (CPS) since 1997, one year after the Illinois Charter Schools Law went into effect. Tr. 125. There are currently 22 YCCS campuses. Tr. 125. The charter agreement between YCCS and CPS in effect at the time of the hearing in this matter is a five-year agreement effective from July 1, 2007, through June 30, 2011. Tr. 126; Un. Ex. 6.

In 2007, YCCS submitted a charter school renewal application to CPS. Tr. 126; Un. Ex. 1. CPS conducted an evaluation of YCCS campuses before approving a renewal of YCCS's charter. Tr. 171. Part of the renewal application related specifically to Latino Youth Alternative High School. Un. Ex. 5. Such portion of the application was completed by Latino Youth in conjunction with YCCS. Tr. 129-30. In the Latino Youth portion of the charter renewal application, the Employer and YCCS provided detailed information to CPS pursuant to CPS charter renewal requirements. Un. Ex. 5. The Latino Youth portion of the renewal application was signed by the Latino Youth Principal in 2007 at the time of the charter renewal application. Un. Ex. 5, p. 1. The Latino Youth portion of the charter renewal application lists the planned and maximum number of students for the current school year as 204. Un. Ex. 5, p. 1. In its portion of the charter renewal application, the Employer submitted to CPS detailed information on Latino Youth, including a breakdown of students with disabilities, homeless students, and English Language Learners; the instructional methods used at the campus; the curriculum; alignment of the curriculum with state standards; student withdrawals; district and state assessment data; professional development; services provided to homeless students, students with disabilities, at-risk students, and English Language Learners; student recruitment and enrollment;

community outreach; parent, teacher and community involvement in school governance; staffing and management of the campus; policies for providing accommodations to persons with disabilities; methods of monitoring student attendance; and an ADA access plan. Un. Ex. 5.

The charter agreement provides that YCCS shall operate a school known as “Youth Connection Charter School.” Un. Ex. 6, p. 2. The charter agreement establishes a maximum student enrollment number. Un. Ex. 6, p.3. The charter agreement lists the attendance centers at which the school shall be located. Un. Ex. 6, p. 9; Attachment 1; Un. Ex. 7, Attachment 1. One of the attendance centers listed in the charter agreement is Latino Youth Alternative High School, located at 2001 South California Avenue, Chicago IL 60608. Latino Youth is listed as serving grades 9 through 12. Un. Ex. 6, pp. 37-8. The charter agreement provides that a change in the location of an existing attendance center or the establishment of a new attendance center by YCCS shall be deemed a material modification of the charter agreement which requires the prior approval of CPS and the Illinois State Board of Education. Un. Ex. 6, p. 10.

YCCS Executive Director Sheila Venson testified that CPS has to approve any vendor change or campus change, including a decision by YCCS not to renew a vendor contract. Tr. 131-2, 178-9, 195-6; Un. Exs. 8, 9, 10.

The charter agreement provides that:

- CPS may establish attendance boundaries for the school. Un. Ex. 6, p. 3.
- YCCS must conduct a lottery and establish a student waiting list in accordance with detailed specified procedures. Un. Ex. 6, p. 3. CPS has established detailed lottery requirements, including requirements as to when the lottery must be held, recruitment of students, and sibling preference. Un. Ex. 18. YCCS follows a lottery procedure pursuant to such requirements. Un. Ex.

18. Latino Youth may recruit prospective students, but such students must participate in the YCCS lottery process pursuant to the CPS guidelines. Tr. 153-5, 169.

- Students may not be involuntarily transferred out of the school. Un. Ex. 6, p. 3.
- The charter school must provide services to homeless children at the same level that CPS provides such services. Un. Ex. 6, p. 11. Such services must be provided in accordance with the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431, *et seq.*, the Illinois Education for Homeless Children Act, 105 ILCS 45/1-5, *et seq.*, and the settlement agreement in *Salazar v. Edwards*, 92 CH 5703 (Circuit Court of Cook County). Un. Ex.6 , p. 11.

- The charter school is required to pursue, make reasonable progress toward, and document student performance standards in compliance with an Accountability Plan that is made part of the charter agreement and in compliance with the School Code. Un. Ex. 6, pp. 3, 17; p. 31 (Ex. F); Un. Ex. 7. The Accountability Plan provides that the charter school will be evaluated annually on per-pupil performance indicators and financial management/compliance indicators. Un. Ex. 6, Ex. E; Un. Ex. 7. The data generated regarding the charter school's relative performance under the Accountability Plan is used in charter renewal decisions. Un. Ex. 6, Ex. E; Un. Ex. 7.

Under the current charter agreement, several terms were imposed on YCCS by CPS. Pursuant to such terms, YCCS submitted documentation regarding its methods for evaluating campuses with regard to compliance and performance. Tr. 133; Un. Ex. 11. Also pursuant to such terms, YCCS submitted a strategic plan to improve instruction. Tr. 138; Un. Ex. 12. Such plan applies to all YCCS campuses. YCCS was required to develop such plan and to have it approved by CPS in order to retain its charter, and such plan, pursuant to CPS requirements, must be implemented at all YCCS

campuses, including Latino Youth. Tr. 138-9. The school improvement plan team included teachers at Latino Youth High School. Un. Ex. 12, p. 2.

- The curriculum must be consistent with the charter application, and notice must be given to CPS of any material changes in the curriculum. Un. Ex. 6, p. 4; Un. Ex. 2.

Details of YCCS's curriculum are set forth in its charter renewal application, as required by CPS's application template. Tr. 128; Un. Ex. 1; Un. Ex. 2. In addition, in 2008, YCCS submitted to CPS detailed information describing the contents of the curriculum at the YCCS campuses, including Latino Youth. Such submission was made in accordance with the terms and conditions established for the renewal of the charter. Un. Ex. 19; Tr. 170.

- The charter school must either adopt a student disciplinary code subject to CPS's approval or follow the CPS disciplinary code. Un. Ex. 6, pp. 4-5. YCCS's discipline policy is aligned with that of the CPS code. Latino Youth is required to follow such due process policy. Un. Ex. 1, p. 190; Un. Ex. 2 (Ex. 15).

- Students may be expelled from the charter school only pursuant to procedures specified in the charter agreement, and detailed factual information regarding any expulsions must be provided to CPS. Un. Ex. 6, pp. 4-5.

Sheila Venson testified that Pilsen Wellness Center does not have the authority to expel a student from Latino Youth. Rather, if Pilsen Wellness Center recommends the expulsion of a student, YCCS must afford the student a due process hearing and provide detailed information regarding such hearing to CPS. Tr. 152-3; Un. Ex. 1, p. 183, 192.

- The charter school shall identify students from non-English-speaking backgrounds through a CPS home language survey and provide bilingual education services or English Language Learner services to which CPS students are entitled. Un. Ex. 6, p. 6.

- The charter school must submit its academic year calendar to CPS. Un. Ex. 6, p. 6. YCCS policies provide that all YCCS campuses follow the CPS calendar. Un. Exs. 12, 13, p. 37.

- In addition to complying with federal and state laws and constitutional provisions as set forth in the Charter Schools Law, the charter school must comply with all federal and state orders and agreements applicable to CPS, including desegregation orders, orders regarding special education, orders regarding bilingual education, compliance agreements, and other agreements with the United States Department of Education or other Federal or State agencies. Un. Ex. 6, pp. 6-8.

- The charter school must provide CPS with a current list of its employees and the employees of each of its subcontractors and with certification or qualification evidence with respect to teachers at all YCCS campuses. Un. Ex. 6, pp. 8-9.

- CPS shall distribute funds to YCCS quarterly based on per capita tuition payments for students enrolled at YCCS campuses. The payments to YCCS are conditioned on submission of required reports and information to CPS. Un. Ex. 6, pp. 12-15. Documentation which YCCS must submit to CPS includes the school calendar; a list of YCCS's board members; a list of board meeting dates, times and locations; copies of board meeting minutes; a detailed budget; quarterly statements showing revenues and actual expenses; a financial/fiscal policies handbook; a financial and compliance audit; a list of employees and results of criminal background checks; teacher qualification data; an election to use CPS special education staff or to hire its own staff; a Title I program design; a school occupancy permit; student enrollment and attendance data; lottery

information; the charter school's student code of conduct or an election to use CPS's code of conduct; student discipline data; and documentation of student suspensions and expulsions. Tr. 155- 158; Un. Ex. 17 (CPS charter school compliance chart), p.1.

Since 2009, the budget submitted by YCCS to CPS must be broken down by campus, so the budget for Latino Youth is submitted to CPS on a quarterly basis. Such quarterly budget shows actual revenues and expenses for Latino Youth. Tr. 159-60; Un. Ex. 16. Other Latino Youth information, including free and reduced lunch forms, is also submitted to CPS on a campus basis. Tr. 161.

The charter school is also required to file with either CPS or the State Board state and federal reports required of Chicago public schools, including Title I reporting forms; state school report card data, including information on parent participation, truancy, class size, time distribution, financial information, and teacher service record; state testing verification; English Language Learner program information; and parent/guardian transportation reimbursement information. Un. Ex. 17, p. 2.

- CPS distributes to the charter school state aid (Supplemental General State Aid, or SGSA) and federal Title I funds based on submission to CPS of eligibility data in connection with such funds. Un. Ex. 6, p. 13.
- CPS may make deductions for delinquent employee contributions to the Chicago Teachers Pension Fund from CPS's quarterly payments to the charter school. Un. Ex. 6, p. 14.
- The charter school must submit to CPS quarterly and annual budgets. Un. Ex. 6, pp. 14-15.
- The charter school must provide enrollment data and daily student attendance data, Individualized Educational Plan (IEP) data and English Language Learner (ELL) data to CPS by

electronic submission through CPS's Student Information/IMPACT electronic student information system, to which the charter school is given access. Un. Ex. 6, p. 15.

Sheila Venson testified that YCCS has access to the IMPACT system from its offices. Tr.148. YCCS policies, which are part of the charter agreement and binding on campuses including Latino Youth, require that teachers maintain daily attendance registers in the method prescribed by CPS. Un. Ex. 13, p. 36. YCCS policies require that Latino Youth have an attendance clerk and a registrar who will maintain student records in accordance with applicable federal, state, and CPS regulations. Un. Ex. 13, pp. 43-4.

- CPS may withhold funds from the charter school if the charter school fails to submit to CPS any documents or information required under the charter agreement; fails to follow any procedures or policies set forth in the charter agreement; fails to submit any data required by CPS or the State Board; fails to meet teacher certification levels; or fails to make timely employee contribution deductions to the Chicago Teachers Pension Fund. Un. Ex. 6, p. 15.

- The charter school shall administer standardized tests as provided in CPS's policies and shall participate in state assessments required of public schools by the School Code. Un. Ex. 6, p. 16.

- The charter school shall grant reasonable access to CPS to allow CPS to conduct site visits for the purpose of evaluating the operations and performance of the charter school. Un. Ex. 6, pp. 16-17.

- The charter school must provide services and accommodations to students with disabilities in accordance with federal law, CPS's procedural manual on educating children with disabilities in Chicago Public Schools, federal court orders applicable to children with disabilities in

Chicago Public Schools, and all service bulletins issued by CPS. CPS shall reimburse the charter school for the salary and benefits of special education teachers based on CPS's special education staffing formulas and the student's IEP. The charter school may elect to furnish its own special education clinicians to provide student support services or may elect to have CPS furnish special education clinicians to serve students with disabilities. Clinicians required by a student's IEP shall be reimbursed at CPS's allocation percentage. CPS shall notify the charter school of the number of special education teachers, paraprofessionals, and clinicians needed in the charter school based on the students enrolled at the charter school as shown by the records entered into the CPS IMPACT system. Any special education teachers, paraprofessionals, and clinicians hired by the charter school must have the proper qualifications, Illinois certificates and/or licenses. CPS shall also provide necessary additional resources, including assistive technologies, required for special education students. Un. Ex. 6, pp. 17-18.

- Any school management or operations contracts entered into by YCCS must have prior approval from CPS and prior certification from the State Board. Un. Ex. 6, p. 18. Moreover, any such contract must provide that:
 - » the service contract must be submitted to CPS for prior review;
 - » the service contract must incorporate by reference the terms and conditions of the charter agreement;
 - » the service contract must be terminable upon any default by the service provider that causes a default under the charter school agreement or that causes the charter school to be in violation of the Charter Schools Law;

» the service provider must provide the charter school with all information needed in order for the charter school to complete the budget, quarterly reports and financial audit which must be submitted to CPS;

» the service contract must require that the service provider comply with all requirements established by any federal or state funding;

» the budget submitted to CPS must include itemization of all contract payments and other amounts paid to the service provider;

» the quarterly financial statements submitted to CPS must include an itemized accounting of all amounts paid to the service provider or otherwise paid for contract services; and

» the financial audit submitted to CPS must include a review of all payments made to the service provider. Un. Ex. 6, pp. 18, 32-4 (Ex. G).

The evidence shows that the YCCS-Pilsen Wellness Center agreement is submitted to CPS for approval as part of the charter renewal process. Tr. 177. Sheila Venson testified that YCCS makes sure that all conditions with which YCCS must comply under its charter agreement are passed down in its vendor contracts. Tr. 134. The Employer is required to provide the necessary detailed information for submission to CPS. Tr. 92, 166, 168.

- The charter may be revoked upon fourteen days' notice if the charter school fails to comply with the Charter Schools Law; commits a material violation of the charter school agreement, including the Accountability Plan; fails to meet or make reasonable progress toward achievement of pupil performance standards identified in the agreement or in the Accountability Plan; fails to meet generally accepted standards of fiscal management; or materially violates any provision of law from which the charter school is not exempted. Un. Ex. 6, p. 19.

- YCCS's charter renewal application (Un. Ex. 1), which was approved by CPS, is made part of the charter agreement. Un. Ex. 6, p. 2, 26 (Ex. A). As required by CPS's renewal application template, such renewal application includes detailed information about the charter school's curriculum, student testing, teacher retention, teacher evaluation, instructional strategies, and professional development. Un. Ex. 1; Tr. 128.

YCCS - Pilsen Wellness Center Agreement

One of the YCCS campuses is Latino Youth Alternative High School. Tr. 126. Latino Youth Alternative High School is an alternative high school for students who have dropped out of other schools. Tr. 18. Latino Youth is a division of Pilsen Wellness Center, a 501(c)(3) non-profit corporation. Tr. 19, 20. YCCS enters into one-year agreements with Pilsen Wellness Center for the operation of Latino Youth Alternative High School. Tr. 140; Un. Ex. 14, 15. At the time of the hearing in this matter, the education service provider agreement between YCCS and Pilsen Wellness Center in effect was for the period from July 1, 2010, through June 30, 2011. Tr. 26-7; Er. Ex. 3. Under the agreement, Latino Youth provides services to 193 YCCS students at Latino Youth High School. Tr. 27. YCCS determines the number of student slots at Latino Youth. Tr. 89. Latino Youth High School is one campus of Youth Connection Charter School. Tr. 56. Latino Youth hires the principal and the teachers for the school. Tr. 28. The Employer currently employs twelve teachers. Tr. 119. Pilsen Wellness Center owns the building in which the school is housed. Tr. 31-2. YCCS and Pilsen Wellness Center have had a series of contractual relationships with respect to the operation of Latino Youth High School since 2006. Tr. 32-3. Latino Youth is able to deliver

education services to the YCCS students at Latino Youth only pursuant to the terms of YCCS's charter agreement. Tr. 142.

Pilsen Wellness Center in operating the Latino Youth High School must comply with all provisions of the Illinois Charter School Law. Tr. 59. The Employer is required by its contract with YCCS to operate the school in accordance with the YCCS charter agreement and all attachments to the charter agreement, including the YCCS charter application and also including the accountability plan that is part of the charter agreement. Tr. 65-6. YCCS evaluates and audits Latino Youth to ensure that it is in compliance with the charter agreement and CPS requirements. Tr. 147.

The current contract between YCCS and Pilsen Wellness Center provides that:

- Modifications to the administrative process or the educational program recommended by the State Board and/or CPS and agreed to by YCCS are incorporated in the agreement. Er. Ex. 3, p. 2.
- YCCS as the authorized charter has the primary responsibility for the educational program and the delivery of the program on the Latino Youth campus. Er. Ex. 3, p. 3.
- Latino Youth is to collaborate with YCCS in the operation of the educational program and the delivery of the program at Latino Youth. Er. Ex. 3, p. 3.
- As the approved and certified charter, YCCS is responsible for the following with respect to Latino Youth:
 - » financial policies and approval of financial budgets and expenditures;
 - » program design frameworks;
 - » marketing communications;
 - » the educational design;

- » the school calendar;
- » policies for and implementation of the lottery process;
- » the enrollment and funding levels per campus;
- » the enrollment and dismissal of students;
- » the expulsion of students;
- » curriculum content, content standards, student performance standards, and grading procedures;
- » establishing and monitoring student performance standards;
- » evaluating whether the campus is meeting or making reasonable progress toward meeting student performance standards;
- » the system for awarding credit;
- » the method and procedures for testing students using district and state mandated tests and local assessments;
- » policies and procedures regarding the education and protection of special needs students;
- » management of the handling and maintenance of student records in accordance with the Student Record Act;
- » establishing policies regarding the discipline and implementation of due process procedures for students;
- » how student achievement information is reported and recorded;
- » graduation requirements;

- » ensuring the qualifications and certifications of both teachers and non-instructional staff;
- » ensuring compliance with building and safety requirements;
- » ensuring compliance with the Americans with Disabilities Act; and
- » ensuring that the campus is operated in compliance with the Charter Schools

Law.

Er. Ex. 3, pp. 4-5.

Under the YCCS-Pilsen Wellness Center agreement, the Pilsen Wellness Center board is required to: “Understand and adhere to all applicable Federal, State of Illinois, and City of Chicago laws, statutes, codes, and ordinances, including the Illinois Charter Schools Law and those laws, terms, and provisions referenced in the Charter School Agreement between the Chicago Public School and Youth Connection Charter School.” Er. Ex. 3, p. 6. The agreement provides that Latino Youth High School must be operated in accordance with:

- » the YCCS charter application submitted to CPS;
- » the YCCS-CPS charter agreement and all amendments to the charter agreement; and
- » the accountability plan that is part of the charter agreement.

Er. Ex. 3, p. 8.

The agreement between YCCS and Pilsen Wellness Center provides that YCCS distributes funding for ADA, SGSA (Supplemental General State Aid), and NCLB (No Child Left Behind) to its campuses based on the seat allocation for each campus. Er. Ex. 3, p. 11. The agreement provides that Pilsen Wellness Center may accept gifts, donations, and grants to the extent that they are accepted

in accordance with the provisions of the Charter Schools Law. Er. Ex. 3, p. 11. The SGSA state funding and NCLB federal funding is passed through CPS to YCCS which distributes such amounts to Pilsen Wellness Center for Latino Youth. Tr. 60. The Employer submits an annual budget to YCCS based on the amount of funding determined by YCCS, and the Employer also submits a monthly accounting of actual revenue and expenditures. Tr. 64-5. CPS pays a per capita tuition amount to YCCS, and YCCS from that amount in turn pays a per capita tuition amount to the Employer. Tr. 93, 104-5.

For the 2009-2010 school year, the amounts paid to the Employer by YCCS included \$38,700.00 in federal NCLB funds and \$90,405.00 in state SGSA funds. Un. Ex. 16; Tr. 142, 144-5. Tuition payments were in the amount of \$1,235,875.50, and a facility supplement was in the amount of \$82,025.00. Un. Ex. 16. All of the direct funds provided to the Employer by YCCS are public CPS, state, or federal funds. Tr. 145. The monthly financial statements of revenue and expenses submitted to YCCS by the Employer itemize how such funds were allocated, including detailed itemizations of the allocations of state and federal funds, showing the amounts and percentages applied to teacher salaries and other costs. Un. Ex. 16. YCCS provides indirect services, including CPS-funded special education teachers and professional development training, to ensure that Latino Youth is in compliance with the vendor contract and the Charter Schools Law. Tr. 146-7.

The agreement between YCCS and Pilsen Wellness Center provides that the teachers at Latino Youth must possess the certifications required by the School Code and must undergo criminal background checks. Er. Ex. 3, pp. 11-12; Tr. 61. At the instructions of YCCS, the Employer has sent the Latino Youth employees to a CPS facility for the purpose of undergoing criminal background checks. CPS then provided the Employer with the results of such background checks, and the

Employer in turn provided such results to YCCS. Tr. 94-5, 102-3, 152. The agreement also provides that in accordance with the Charter Schools Law, Pilsen Wellness Center will ensure compliance with the teacher participation requirements and contribution requirements of the Chicago Teachers Pension and Retirement Fund. Er. Ex. 3, p. 13. The Employer pays the pension fund contributions directly to the Pension Fund and not to YCCS. Tr. 61-2.

The agreement also provides that Pilsen Wellness Center “understands and agrees to comply with all applicable federal state [sic], local laws, and statutes governing the provision of educational services under the Illinois Charter School Law” including laws related to safety, fire drills, tornado protection program, health examinations, AIDS education, Illinois School Student Records Act, Equal Opportunity Employment and Fair Hiring; Abused and Neglected Child Reporting Act; and Freedom of Information Act. Er. Ex. 3, pp. 13-14; Tr. 62-3, 149-50.

The agreement provides that YCCS may terminate the agreement immediately if Pilsen Wellness Center is in default under the agreement and fails to cure such default within ten days. Er. Ex. 3, pp. 17-18. YCCS also may terminate the agreement on thirty days’ notice. Er. Ex. 3, p. 18.

The agreement provides that Pilsen Wellness Center “understands and agrees that in regard to the use of public monies/funds, it will adhere to all applicable Federal, State of Illinois, and City of Chicago laws, statutes, codes, and ordinances, including the Illinois Charter Schools Law and those laws, terms, and provisions referenced in the Charter School Agreement between the Chicago Public School [sic] and Youth Connection Charter School.” Er. Ex. 3, p. 20.

Two YCCS special education teachers provide services at Latino Youth. Tr. 79. Such teachers provide services to the students who have IEPs and to whom, as public school students, special education services must be provided in accordance with federal law. Tr. 80, 98. Several CPS

employees, including a nurse, a psychologist and a social worker, come to Latino Youth to provide services to students. The nurse comes for a half day one day a week, and the social worker and psychologist both come for a full day each week. Tr. 115-117. CPS has conducted safety inspections of Latino Youth High School. Tr. 102. Latino Youth students complete CPS applications for free and reduced lunch. Tr. 113. CPS provides lunches at Latino Youth High School to the students who qualify for free lunch. Tr. 148-9, 202, 207.

The Latino Youth Registrar and other Latino Youth employees have gone to the YCCS offices for the purposes of inputting student information, including student add and drop information, immunization records, and demographic information, into the CPS IMPACT system. Tr. 84-5, 103, 148, 199-201. Such information is submitted by the Employer to CPS pursuant to CPS requirements. Tr. 149-50. The YCCS special education teachers who provide services to Latino Youth students access Latino Youth student IEP records through the IMPACT system at the YCCS offices. Tr. 98-9. Latino Youth submits daily attendance records to CPS through the IMPACT system. Tr. 151.

Latino Youth may recruit students and provide applications to students who come to the school, but such applications are submitted to YCCS so that the prospective students can be entered in the lottery administered by YCCS in accordance with the requirements of the Charter Schools Law and CPS policies. Tr. 81, 153-4. Latino Youth must allow students from throughout the City of Chicago to apply and to participate in the lottery. Tr. 101. The Employer is not permitted to charge tuition to students who attend Latino Youth High School. Tr. 101.

Regional Director's Decision and Order

The Regional Director issued a Decision and Order on January 3, 2011. The Regional Director found that Pilsen Wellness Center is a political subdivision exempt from coverage under the Act within the meaning of Section 2(2) of the Act. Regional Director's Decision and Order at 2. The Regional found that the Employer is not a political subdivision under the first prong of *NLRB v. Natural Gas Utility District of Hawkins County, Tennessee*, 402 U.S. 600 (1971), but that the Employer is a political subdivision under the second prong of *Hawkins County*. Regional Director's Decision and Order at 2.

ARGUMENT

The Employer is administered by individuals who are responsible to public officials or to the general electorate and is therefore an exempt political subdivision under the second prong of *Hawkins County*.

In determining whether an entity is an exempt political subdivision under the second prong of *Hawkins County*, the Board looks at whether the entity's policy making officials are directly accountable to public officials or to the general public. *Rosenberg Library Association*, 269 NLRB No. 197 (1984). The Board has found entities to be political subdivisions even though they are operated by board members who are not appointed by or subject to removal by public officials or the general electorate. *See Rosenberg Library Association* [employer's board of trustees selected by existing board members]; *New York Institute for the Education of the Blind*, 254 NLRB No. 85 (1981) [employer operated by board members who are private citizens and who are appointed with no input from the State]; *Association for the Developmentally Disabled*, 231 NLRB No. 121 (1977) [employer

a nonprofit corporation with a board of directors composed of individuals who themselves select new board members].

The Board also considers whether the entity possesses attributes commonly associated with public status. *Aramark Corp. v. NLRB*, 156 F. 3d 1087, 1093 (10th Cir. 1998), *vacated in part on rehearing en banc*, 179 F. 3d 872 (10th Cir. 1999). The Board examines factors bearing on an entity's relationship to a state, including whether the individuals who administer the entity are appointed by or subject to removal by public officials; whether the employer is publicly funded; whether the employer's expenditures are subject to any public financial reporting and auditing strictures; whether the employer carries out day-to-day management responsibilities free from or subject to oversight; and whether the employer is governed by public record or open meeting requirements. *Regional Medical Center at Memphis*, 343 NLRB No. 48 (2004); *Research Foundation of the City University of New York*, 337 NLRB No. 152 (2002).

In *Regional Medical Center at Memphis*, the Board found an entity engaged in operating a hospital and medical clinics to be administered by individuals who were responsible to public officials. In so finding, the Board relied on findings that the employer's annual budget was subject to approval by the county; the employer was required to have a public audit and to file an annual financial report to the county; the employer was required to make its facility available to all county residents who were in need regardless of their financial status; meetings of the employer's board of directors were subject to the state open meetings act; the number and selection of the employer's board of directors were subject to appointment by the county; and the employer was funded by the county. The employer in that case was found to be administered by individuals who were responsible

to public officials even though the employer operated its facility independently on a day-to-day basis. 343 NLRB 346.

In *Rosenberg Library Association*, the Board found the employer, which operated a library, to be an exempt political subdivision. The library's board of trustees was established pursuant to the terms of a private will, and successor trustees were selected by remaining members of the board of trustees. The employer was nonetheless found to be an exempt political subdivision based on the Board's finding that the employer was administered by individuals who were responsible to public officials or the general electorate. The Board relied on its findings that: the employer operated under state library regulations; the employer was heavily dependent on city, county, state, and federal tax moneys as sources for operating funds; the employer was answerable to the city for its expenditures of revenues; the employer was required to submit a line-item budget annually for approval by the county; the employer operated the library as a public facility to serve the needs of city and county residents; and the library was part of the Houston Area Library System, which established certain standards for employee qualifications, staffing, hours, and funding.

In *Research Foundation of the City University of New York*, the Board found a non-profit educational corporation not to be an exempt political subdivision where the employer received no publicly appropriated funds and where the employer submitted financial reports to the state voluntarily but was not statutorily mandated to submit such reports. 337 NLRB 965. In *Cape Girardeau Care Center*, 278 NLRB No. 143 (1986), the Board, in finding a nursing home not to be an exempt political subdivision under the second prong of *Hawkins County*, found that the employer's board of directors was not accountable to public officials or to the general public, that the employer was not a county nursing home, that the county provided no funds or other support to the employer,

that the employer determined its own fee schedules and budgets and was not required to submit such documents to the county, that the county had no control over the employer's operations, and that the employer's employees were not covered by the county's pension or health insurance plans.

In *Charter School Administration Services Inc.*, 353 NLRB No. 35 (2008), the Board found an employer that operated a charter school not to be an exempt political subdivision under the second prong of *Hawkins County*. While the Board found that the individuals who administered the employer in that case were not appointed by or subject to removal by public officials, the Board, in finding the employer not to be a political subdivision, also relied on its findings that: (1) the employer was not subject to the Michigan Open Meetings Act; (2) the employer was not subject to the Michigan Freedom of Information Act; (3) the employer had no direct reporting requirements to the State; (4) the employer was not required to submit a financial audit to the State; (5) the employer was not required to submit its budget to the State for review; (6) the employer did not directly receive any public funds; and (7) the employer's employees did not enjoy any government immunity.

The facts in this case are distinguishable from the facts in *Charter School Administration Services* in several respects. YCCS's charter agreement with CPS requires that any school management or operations contracts entered into by YCCS must have prior approval from CPS and prior certification from the State Board. Un. Ex. 6, p. 18. Moreover, any such contract must provide that: the service contract must be submitted to CPS for prior review; the service contract must incorporate by reference the terms and conditions of the charter agreement; the service contract must be terminable upon any default by the service provider that causes a default under the charter school agreement or that causes the charter school to be in violation of the Charter Schools Law; the service provider must provide the charter school with all information needed in order for the charter school

to complete the budget, quarterly reports and financial audit which must be submitted to CPS; the service contract must require that the service provider comply with all requirements established by any federal or state funding; the budget submitted to CPS must include itemization of all contract payments and other amounts paid to the service provider; the quarterly financial statements submitted to CPS must include an itemized accounting of all amounts paid to the service provider or otherwise paid for contract services; and the financial audit submitted to CPS must include a review of all payments made to the service provider. Un. Ex. 6, pp. 18, 32-4 (Ex. G). The evidence showed that the YCCS-Pilsen Wellness Center agreement is submitted to CPS for approval as part of the charter renewal process. Tr. 177.

In accordance with the charter agreement, the YCCS-Pilsen Wellness Center agreement provides that the Employer's board is required to: "Understand and adhere to all applicable Federal, State of Illinois, and City of Chicago laws, statutes, codes, and ordinances, including the Illinois Charter Schools Law and those laws, terms, and provisions referenced in the Charter School Agreement between the Chicago Public School and Youth Connection Charter School." Er. Ex. 3, p. 6. The agreement provides that Latino Youth High School must be operated in accordance with the YCCS charter application submitted to CPS; the YCCS-CPS charter agreement and all amendments to the charter agreement; and the accountability plan that is part of the charter agreement. Er. Ex. 3, p. 8.

The agreement also provides that Pilsen Wellness Center "understands and agrees to comply with all applicable federal state [sic], local laws, and statutes governing the provision of educational services under the Illinois Charter School Law" including laws related to safety, fire drills, tornado protection program, health examinations, AIDS education, Illinois School Student Records Act, Equal

Opportunity Employment and Fair Hiring; Abused and Neglected Child Reporting Act; and Freedom of Information Act. Er. Ex. 3, pp. 13-14. The agreement provides that Pilsen Wellness Center “understands and agrees that in regard to the use of public monies/funds, it will adhere to all applicable Federal, State of Illinois, and City of Chicago laws, statutes, codes, and ordinances, including the Illinois Charter Schools Law and those laws, terms, and provisions referenced in the Charter School Agreement between the Chicago Public School and Youth Connection Charter School.” Er. Ex. 3, p. 20.

Pursuant to the provisions of both the Charter Schools Law and the IELRA, Pilsen Wellness Center is a public educational employer subject to and required to comply with the provisions of the IELRA, a comprehensive state public sector collective bargaining law applicable to educational employers and employees. Pilsen Wellness Center is subject to the Illinois Freedom of Information Act, which applies only to public bodies. Pilsen Wellness Center must comply with the Illinois School Student Records Act, which regulates student records in public, but not private, schools. The laws with which the Employer must comply by virtue of the charter agreement, which is incorporated into its contract with YCCS, also include the Illinois Open Meetings Act and the Local Governmental and Governmental Employees Tort Immunity Act.

Latino Youth is funded by CPS per capita tuition that is paid to YCCS and that YCCS pays over to Pilsen Wellness Center after subtracting an administrative fee and by state SGSA funds and federal NCLB funds that are received by YCCS from CPS and paid over to Pilsen Wellness Center. Latino Youth teachers must be certified or otherwise qualified in accordance with the Charter Schools Law, must undergo background checks that are performed by CPS in accordance with the Charter Schools Law, and participate in the Chicago Teachers Pension Fund. Pilsen Wellness Center must

enroll in Latino Youth all students within the attendance boundaries designated by CPS for its school subject to a lottery and waiting list and cannot charge tuition to students residing within the school district. Pilsen Wellness Center must comply with CPS's responsibility to provide a free public education to students regardless of their status as being homeless or requiring special education services.

Under the YCCS-Pilsen Wellness Center agreement and pursuant to the Charter Schools Law, the Employer must submit budget and financial information which are submitted by YCCS to CPS. The Latino Youth principal signed the Latino Youth portion of YCCS's most recent charter renewal application, and such portion of the charter renewal application provided CPS with a detailed accounting of the operations of Latino Youth in accordance with the requirements of the Charter Schools Law.

Under the YCCS charter agreement as incorporated in the YCCS-Pilsen Wellness Center agreement, the Employer must maintain and submit student attendance records which must be submitted to CPS on a daily basis. The Employer must follow a curriculum consistent with YCCS's charter agreement. The Employer, in operating a YCCS campus, must either follow the CPS student discipline code or a different code approved by CPS. The Employer must provide services to homeless students and to English Language Learners to the extent that CPS must provide such services and in accordance with federal and state law and CPS policy. The Employer's school calendar must be one that has been submitted to CPS. While the Employer may recruit students, the Employer must admit all students within the school district subject to a lottery and waiting list, in accordance with CPS procedures. The Employer is prohibited from involuntarily transferring students out of its school. The Employer must submit its budgets and financial audits to YCCS so that they

may be submitted to CPS. Such budgets include a detailed accounting of the allocation of state and federal funds received by Latino Youth. The Employer must administer standardized tests in accordance with CPS policies and the School Code, and, in accordance with the YCCS charter agreement as adopted in the YCCS-Pilsen Wellness Center agreement, must demonstrate reasonable progress toward achievement of pupil performance standards set forth in the charter agreement and the Accountability Plan.

Here, thus, the facts show that the Employer, pursuant to the Charter Schools Law, is part of the Illinois public school system. Pursuant to both the Charter Schools Law and the IERLA, the Employer is a public educational employer required to comply with and subject to the IELRA. The Employer, pursuant to the Charter Schools Law, is a public body subject to the Illinois Freedom of Information Act and the Illinois Student Records Act. Under the charter agreement as incorporated in the YCCS-Pilsen Wellness Center agreement, the Employer is required to submit budgets and an annual financial audit to YCCS to be submitted to CPS. The Employer receives CPS, state and federal education funds that are paid to YCCS by CPS and then paid by YCCS to the Employer, and the Employer must comply with federal, state and local laws in connection with the use of such public funds. Given CPS's oversight of the Employer's budget with respect to the operation of Latino Youth, CPS's funding for the operation of Latino Youth and the Employer's reporting accountability requirements, the Employer's board of directors, although not appointed by or subject to removal by public officials, are nonetheless accountable to CPS to such an extent that the Employer's governing body is responsible to public officials or the general electorate.

The Employer operates under a year-to-year contract, and such contract requires the Employer to comply with the requirements imposed on YCCS under the Charter Schools Law and under its

charter agreement. The Employer must comply with state laws, including the Freedom of Information Act and the Student Records Act, which apply only to public, and not private, schools. Moreover, the Employer must ensure that its teachers are certified or otherwise qualified in accordance with the Charter Schools Law and must make contributions on behalf of its teachers to the Chicago Teachers Pension Fund, a retirement system for public school teachers.

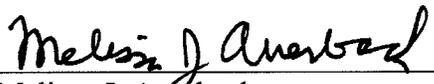
Given CPS's oversight of the Employer's budget, CPS's funding to the Employer, and the Employer's reporting accountability requirements, the Employer's board of directors, although not appointed by or subject to removal by public officials, are nonetheless accountable to CPS to such an extent that the Employer's governing body is responsible to public officials or to the general electorate. The Regional Director thus correctly found that Pilsen Wellness Center in its operation of Latino Youth High School is a political subdivision exempt from Board jurisdiction under the second prong of *Hawkins County*.

CONCLUSION

For the foregoing reasons, the Employer is a political subdivision exempt from Board jurisdiction. The Regional Director's Decision and Order dismissing the RM petition should therefore be affirmed.

Respectfully submitted,

CORNFIELD AND FELDMAN

By: 
Melissa J. Auerbach

Attorneys for the Union

Dated: October 26, 2011

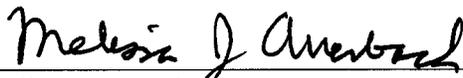
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CERTIFICATE OF SERVICE

Melissa J. Auerbach, an attorney, hereby certifies that she caused a true and accurate copy of the foregoing **Brief of the Union** to be served upon the following by electronic mail on this 26th day of October 2011.

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