

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

COMMUNITY SCHOOL OF EXCELLENCE

and

**Cases 18-CA-145860
18-CA-151198
18-CA-165594**

**EDUCATION MINNESOTA: FEDERATION
OF CHARTER SCHOOL EMPLOYEES**

DECISION AND ORDER

Statement of the Cases

On April 18, 2016, Community School of Excellence (the Respondent), Education Minnesota: Federation of Charter School Employees (the Union), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

Findings of Fact

1. The Respondent's business

At all material times, the Respondent, a Minnesota non-profit corporation with an office and place of business in St. Paul, Minnesota, has been engaged in the operation of a charter school.

During the calendar year ending December 31, 2015, the Respondent, in conducting its operations described above, purchased and received at its St. Paul, Minnesota facility goods and services valued in excess of \$5,000 directly from suppliers

located outside the State of Minnesota, and earned gross revenues in excess of \$1,000,000.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The labor organization

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that:

The Respondent, Community School of Excellence, St. Paul, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining or enforcing rules against posting pictures of Community School of Excellence Events, staff, or students without prior written approval from the Respondent.

(b) Maintaining or enforcing rules requiring that staff work collegially and in a spirit of cooperation and peace as a team because employees engaged in activity protected by the National Labor Relations Act.

(c) Threatening employees for sending e-mails to all staff instead of bringing work-related concerns directly to the Respondent's administration.

(d) Threatening employees that they must get permission before sending e-mails to staff regarding work-related issues and prohibiting such e-mails without prior permission.

(e) Threatening employees by requiring employees to follow a performance improvement plan including directives to avoid negative comments and conversations.

(f) Threatening employees by requiring employees to follow a performance improvement plan including directives to avoid raising work-related complaints with anyone but the employees' supervisors.

(g) Threatening employees by requiring employees to follow a performance improvement plan including, among other directives, being professional and respectful in interactions with other staff.

(h) Threatening employees by stating that the administration was appalled by, and would investigate, comments employees made at a staff meeting regarding work related complaints.

(i) Threatening employees that because they engage in union or other concerted protected activities, including: by describing protected and concerted contacts with the press about NLRB charges underhanded and slanderous; by describing employees' protected and concerted contacts with the press as out of control; or by telling Union representatives that it has to control employees' protected and concerted contacts with the press or the school administrators will.

(j) Coercively interrogating employees concerning their union or other concerted protected activities, including about whether other employees are pressuring them in protected and concerted discussions about wages, hours, and terms and conditions of employment, including age-related admissions policies and the policies' effects on their working conditions; or about whether employees are talking to the Union about such issues, or about employees' attendance at school board meetings or contacts with the press.

(k) Threatening, renewing or placing employees on performance improvement plans in retaliation for employees' protected and concerted activities.

(l) Reprimanding or otherwise disciplining employees in retaliation for employees' protected and concerted activities.

(m) Reviewing any employee's employment history in response to their union or other concerted protected activities with an intention to find reasons to terminate the employee.

(n) Discharging or otherwise discriminating against employees in retaliation for their engagement in union or other concerted protected activities, and in order to discourage membership in Education Minnesota: Federation of Charter Schools Employees (the Union), or in any other labor organization.

(o) Failing or refusing to bargain collectively in good faith with the Union as bargaining representative of the Respondent's employees in the appropriate unit about wages, hours, and terms and conditions of employment including discretionary discipline and discharge of employees. The appropriate bargaining unit is:

All full-time and regular part-time teachers, educational assistants, tutors, custodial, clerical, and food service employees employed at its school facility located at 170 Rose Avenue, St. Paul, Minnesota; excluding all managers, guards and supervisors as defined in the Act as amended, and confidential employees.

(p) Discretionarily disciplining, including by discharging, employees without giving the Union adequate notice and an opportunity to bargain over that discipline.

(q) In any other manner failing or refusing to bargain in good faith, or impeding or interfering with the efforts of the Union as its employees' exclusive representative to bargain collectively on their behalf and to represent them properly in accordance with the requirements of the Act, or thereby interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Rescind performance improvement plans issued to Eric Johnson (dated November 3, 2014) and Wendy Ansley (dated December 5, 2014), and notify them in writing that this has been done and that the plans will not be used against them in any way.

(b) Rescind warnings issued to Eric Johnson, Wendy Ansley, Rebecca Blythe Inners, and Bong Xiong dated December 15 or 16, 2014, and to Rebecca Blythe Inners dated January 9, 2015, and notify them in writing that this has been done and that the warnings will not be used against them in any way.

(c) Make Eric Johnson whole for any losses suffered since his discharge on October 20, 2015; remove from its files all references to the discharge of Eric Johnson; and notify him in writing that this has been done and that the discharge will not be used against him in any way. Johnson, who is entitled to reinstatement, has waived his right to reinstatement to his former job.

(d) Within 14 days of service by the Region, post at its St. Paul, Minnesota facility copies of the attached Notice marked "Appendix A." Copies of the Notice, on forms provided by Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted, in English, Hmong, and Karenni. The Respondent will take reasonable steps to ensure that the Notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by Respondent at any time since October 30, 2014.

(e) In addition to physical posting of paper notices, the Notice to Employees shall be distributed electronically, such as by email, posting on an intranet or an Internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 18 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., July 12, 2016

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

As you may know, Education Minnesota: Federation of Charter School Employees filed charges with the National Labor Relations Board alleging we violated the National Labor Relations Act. The charges have been investigated and settled. As part of the Settlement Agreement, we have agreed to post this Notice to Employees.

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

YOU HAVE THE RIGHT to discuss wages, hours and working conditions with other employees and to freely bring work related issues and complaints to us on behalf of yourself and other employees and **WE WILL NOT** do anything to interfere with your exercise of those rights.

YOU HAVE THE RIGHT to engage in protected concerted activity. Protected concerted activity includes bringing group issues to the attention of management, and it includes discussions between employees about terms and conditions of employment including discussions about wages, disciplines, supervisors and all other terms and conditions of employment. Protected discussions include discussions about your employment which are meant to initiate group action, or are otherwise for the benefit and protection of employees.

WE WILL NOT stop employees from publishing pictures of staff and Community School of Excellence events which do not include students and **WE WILL** change the rule in our handbook on that subject.

WE WILL NOT stop employees from discussing wages, hours and working conditions with other employees or to otherwise prevent employees from engaging in protected concerted activity through the application of any of the policies in our handbook,

employment contracts or expectations of staff, including our policy that employees work collegially with the entire staff.

WE WILL NOT restrict employees' use of our e-mail system or require employees to receive preapproval before sending e-mails because they engage in activity with other employees regarding wages, hours, and working conditions, or because employees choose to be represented by or support a union.

WE WILL NOT threaten, renew or place employees on performance improvement plans because they engaged in activity with other employees regarding wages, hours, and working conditions, or because they chose to be represented by or support a union.

WE WILL NOT threaten or discipline employees for failing to follow our complaint resolution procedures merely because they engage in activity with other employees regarding wages, hours, and working conditions, or because they choose to be represented by or support a union.

WE WILL NOT threaten or discipline employees for being unprofessional when interacting with staff or CSE administration merely because they engage in activity with other employees regarding wages, hours, and working conditions, or because they chose to be represented by or support a union.

WE WILL NOT threaten employees that their comments are appalling because they exercise their right to discuss or protest working conditions with employees, or because they publicize labor disputes at meetings with third parties.

WE WILL NOT discipline or reprimand employees merely because they exercise their right to discuss wages, hours and working conditions with other employees, because they publicize labor disputes at meetings with third parties, or because they choose to be represented by or support a union.

WE WILL NOT threaten employees because they engage in union or other concerted protected activities, including by describing contacts with the press about NLRB charges as underhanded and slanderous; by describing employees' contacts with the press as out of control; or by telling Union representatives that they have to control employees' contacts with the press or the school administrators will.

WE WILL NOT ask employees about their union or other concerted protected activities, including whether the Union or other employees are pressuring them in discussions about wages, hours, and terms and conditions of employment with other employees, including age-related admissions policies, or about whether employees are talking to the Union about such issues, or about employees' attendance at school board meetings or contacts with the press.

WE WILL NOT fire or otherwise discriminate against employees because of their union membership or support, or because they engage in other protected and concerted

activities, in order to discourage membership in Education Minnesota: Federation of Charter School Employees, or in any other labor organization.

WE WILL NOT undertake to review your employment history in order to find reasons to fire you because you support the Union or engage in other protected concerted activities with other employees.

WE WILL remove from our files all references to the performance improvement plans of Eric Johnson and Wendy Ansley dated November 3, 2014, and December 5, 2014, respectively, and **WE WILL** notify them in writing that this has been done and that the performance improvement plans will not be used against them in any way.

WE WILL remove from our files all references to the warnings of Wendy Ansley, Eric Johnson, Bong Xiong and Blythe Inners dated December 15, 2014, or December 16, 2014, and **WE WILL** notify them in writing that this has been done and that the warnings will not be used against them in any way.

WE WILL remove from our files all references to the warning of Blythe Inners delivered on January 9, 2015, and **WE WILL** notify her in writing that this has been done and that the verbal reprimand will not be used against her in any way.

Eric Johnson has declined reinstatement to his former job.

WE WILL pay Eric Johnson for the wages and other benefits he lost because we fired him.

WE WILL remove from our files all references to the discharge of Eric Johnson and **WE WILL** notify him in writing that this has been done and that the discharge will not be used against him in any way.

Education Minnesota: Federation of Charter School Employees is the employees' representative in dealing with us regarding wages, hours and other working conditions of the employees in the following unit:

All full-time and regular part-time teachers, educational assistants, tutors, custodial, clerical, and food service employees employed at our school facility located at 170 Rose Avenue, St. Paul, Minnesota; excluding all managers, guards and supervisors as defined in the Act as amended and confidential employees.

WE WILL, upon request, bargain in good faith with Education Minnesota: Federation of Charter School Employees as the exclusive collective-bargain representative of our unit employees.

WE WILL NOT fail or refuse to meet and discuss in good faith with your Union any proposed changes in wages, hours and working conditions, including discretionary discipline and/or discharge, before putting such changes into effect.

WE WILL, if requested by the Union, rescind any or all changes to your terms and conditions of employment that we made without bargaining with the Union.

WE WILL pay employees for the wages and other benefits lost because of the changes to terms and conditions of employment that we made without bargaining with the Union.

WE WILL NOT in any other manner interfere with your rights under Section 7 of the Act.

COMMUNITY SCHOOL OF EXCELLENCE
(Employer)

The Board's decision can be found at www.nlr.gov/case/18-CA-145860 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

