

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RIVERHEAD CHARTER SCHOOL

Employer

and

Case 29-RD-132061

JESSICA FARMER

Petitioner

and

RIVERHEAD CHARTER SCHOOL EMPLOYEES'  
ASSOCIATION, NEW YORK STATE UNITED TEACHERS  
AFT, NEA, AFL-CIO, LOCAL #22170

Union

ORDER

The Union's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.<sup>1</sup>

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<sup>1</sup> In denying review, we agree with the Regional Director, for the reasons he stated, that the Employer charter school is not exempt as a political subdivision under Sec. 2(2) of the National Labor Relations Act. We find that the Regional Director correctly applied the test in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971) ("Hawkins County"), in finding that the Employer was neither created directly by the state so as to constitute a department or administrative arm of the government nor administered by individuals who are responsible to public officials or the general electorate. We do not however, rely on the Regional Director's citation to *Chicago Mathematics & Science Academy Charter School*, 359 NLRB 455 (2012), a recess-Board decision. See *NLRB v. Noel Canning*, 1345 S.Ct. 2550 (2014). Instead, we find that the Regional Director's analysis is consistent with *Hyde Leadership Charter School*, 364 NLRB No. 88 (2016). In *Hyde*, the Board applied the *Hawkins County* test to another New York charter school operating pursuant to the same state statute, whose creation by individual applicants and governance by its board of trustees exhibit only minor, non-substantive differences from the instant case. In addition, in asserting jurisdiction in *Hyde Leadership*, we rejected arguments that substantially mirror those raised by the Union in this case.

We likewise find no merit in the Union's and amici's arguments that the Board should, pursuant to Sec. 14(c)(1) of the Act, decline to assert jurisdiction over the Employer because education is a matter of local and state concern, and the state legislature intended to treat charter schools as public schools and political subdivisions. The Board rejected similar arguments in

MARK GASTON PEARCE,

CHAIRMAN

LAUREN McFERRAN,

MEMBER

Dated, Washington, D.C., October 7, 2016

Member Miscimarra, dissenting:

I would grant the Petitioner's Request for Review and dismiss the petition. The Employer is a charter school located in Riverhead, New York, that was chartered by the New York State Board of Regents pursuant to the New York Charter Schools Act. For the reasons fully explained in my dissenting opinion in *Hyde Leadership Charter School*, 364 NLRB No. 88, slip op. at 9-16 (2016) (Member Miscimarra, dissenting), the Employer is a political subdivision of the State of New York exempt from the Board's jurisdiction pursuant to Section 2(2) of the Act under the standard set forth in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971). In addition, I would in any event decline jurisdiction over the Employer, and over charter schools as a class, pursuant to Section 14(c)(1) of the Act for the reasons fully explained in my dissenting opinions in *The Pennsylvania Virtual Charter School*, 364 NLRB No. 87, slip op. at 11-18 (2016) (Member Miscimarra, dissenting), and *Hyde Leadership Charter School*, above, slip op. at 14-15 (Member Miscimarra, dissenting).

PHILIP A. MISCIMARRA,

MEMBER

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*Hyde Leadership*, supra, slip op. at 7-8, and *Pennsylvania Virtual Charter School*, 364 NLRB No. 87, slip op. at 9-10 (2016).