

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

**TEMPLE UNIVERSITY HOSPITAL, INC.**

**Employer**

**and**

**Case 04-RC-162716**

**TEMPLE ALLIED PROFESSIONALS,  
PENNSYLVANIA ASSOCIATION OF  
STAFF NURSES AND ALLIED  
PROFESSIONALS (PASNAP)**

**Petitioner**

**ORDER GRANTING REVIEW IN PART  
AND INVITATION TO FILE BRIEFS**

The Employer's Request for Review of the Acting Regional Director's Decision and Direction of Election is granted with respect to the following issues, which the parties and interested *amici* are invited to address:

1. Should the Board exercise its discretion to decline jurisdiction over the Employer Temple University Hospital, Inc.?
2. Should the Board extend comity to the unit of the Employer's professional and technical employees certified by the Pennsylvania Labor Relations Board (PLRB) in 2006?<sup>1</sup>

The Request for Review is denied in all other respects.<sup>2</sup>

---

<sup>1</sup> See generally *Summer's Living Systems, Inc.*, 332 NLRB 275 (2000), *enfd. sub. nom Michigan Community Services, Inc. v. NLRB*, 309 F.3d 348 (6th Cir. 2002); *Standby One Associates*, 274 NLRB 952 (1985); *Albert Einstein Medical Center*, 248 NLRB 63 (1980); *Doctors Osteopathic Hospital*, 242 NLRB 447 (1979), *enfd.* 624 F.2d 1089 (3d Cir. 1980) (Table); *Allegheny General Hospital*, 230 NLRB 954 (1977), *enf. denied on other grounds* 608 F.2d 965 (3d Cir. 1979); *Mental Health Center of Boulder County, Inc.*, 222 NLRB 901 (1976); *St. Joseph's Hospital*, 221 NLRB 1253 (1975), *enfd.* 542 F.2d 495 (8th Cir. 1976). In its Request for Review, the Employer argues that if the Board asserts jurisdiction over it in this proceeding, then the certification issued by the PLRB in 2006 is void for want of jurisdiction at the time of issuance. We do not decide the merits of that argument here, but see *Mental Health Center of Boulder County*, above, 222 NLRB at 901-902. Cf. *Summer's Living Systems*, above, 332 NLRB at 277, 286; *Doctors Osteopathic Hospital*, above, 242 NLRB at 450.

<sup>2</sup> In this connection, we find that the Acting Regional Director correctly applied the test in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971), in finding that that the Employer Temple University Hospital, Inc. is not exempt as a political subdivision under

Briefs by the parties not exceeding 50 pages in length and conforming to the requirements of Board Rule 102.67(i) and briefs by *amici* not exceeding 20 pages shall be filed with the Board in Washington, D.C., on or before January 12, 2017. The parties may file responsive briefs on or before January 26, 2017, which may not exceed 25 pages in length. The parties and *amici* shall file briefs electronically by going to [www.nlr.gov](http://www.nlr.gov) and clicking on “eFiling.” Parties and *amici* are reminded to serve all case participants. A list of case participants may be found at <http://www.nlr.gov/case/04-RC-162716> under the heading “Service Documents.” If assistance is needed in E-Filing on the Agency’s website, please contact the Office of Executive Secretary at 202-273-1940 or the Executive Secretary Gary Shiners at 202-273-3737.

MARK GASTON PEARCE,	CHAIRMAN
PHILIP A. MISCIMARRA,	MEMBER
LAUREN McFERRAN,	MEMBER

Dated, Washington, D.C., December 29, 2016.

---

Sec. 2(2) of the National Labor Relations Act because 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 Acting Regional Director’s citation to *Chicago Mathematics & Science Academy Charter School*, 359 NLRB 455 (2012), as the Board’s decision there was subsequently invalidated by *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). Instead, we find that the Acting Regional Director’s analysis is consistent with *Pennsylvania Virtual Charter School*, 364 NLRB No. 87, slip op. at 1–16 (2016). As stated in that case: “Where an examination of the appointment-and-removal method yields a clear answer to whether an entity is ‘administered by individuals who are responsible to public officials or to the general electorate,’ the Board’s analysis properly ends.” *Id.*, slip op. at 9.

Further, assuming arguendo that the doctrine of judicial estoppel, as elucidated by the Supreme Court in *New Hampshire v. Maine*, 532 U.S. 742 (2001), applies in Board proceedings, we affirm the Acting Regional Director’s conclusion that the Petitioner is not estopped from bringing the instant petition. “[J]udicial estoppel is an equitable doctrine invoked by a court at its discretion.” *New Hampshire v. Maine*, 532 U.S. at 750 (internal quotation and citation omitted). We agree with the Acting Regional Director’s findings that processing the petition will not confer an unfair advantage on the Petitioner or impose an unfair detriment on the Employer; there is no evidence that the Petitioner misled the PLRB, and there is an inadequate basis to believe the PLRB would have reached a different result had the Petitioner taken some contrary position before the PLRB.

Member Miscimarra would grant the Employer’s Request for Review with respect to all of the issues raised therein. While he concurs in granting review with respect to whether the Board should exercise its discretion to decline jurisdiction and whether the Board should extend comity to the unit certified by the PLRB, Member Miscimarra finds it unnecessary at this time to pass on the precedent cited by his colleagues in fn. 1, *supra*.