

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

VOICES FOR INTERNATIONAL BUSINESS AND
EDUCATION, INC. D/B/A INTERNATIONAL
HIGH SCHOOL OF NEW ORLEANS
Employer

and

Case 15-RC-175505

UNITED TEACHERS OF NEW ORLEANS,
LOCAL 527, LFT, AFT
Petitioner

ORDER

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

¹ In denying review, we agree with the Regional Director, for the reasons she 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 of Louisiana 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 *Pennsylvania Virtual Charter School*, 364 NLRB No. 87 (2016) ("*Pennsylvania Virtual*") and *Hyde Leadership Charter School-Brooklyn*, 364 NLRB No. 88 (2016) ("*Hyde Leadership*"). In each of those cases, the Board applied the *Hawkins County* test to a charter school operating pursuant to a 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 asserting jurisdiction in those cases, the Board rejected arguments similar to those raised by the Employer in this case.

We likewise find no merit in the Employer's arguments that the Board should, pursuant to Sec. 14(c)(1) of the Act, decline to assert jurisdiction over the charter school, a private, non-profit education corporation, because of its limited impact on interstate commerce, the legislative intent to treat charter schools as public schools, and the state's authority to regulate the labor relations of its public employees. The Board has rejected similar arguments in *Pennsylvania Virtual*, supra, slip op. at 9-10, and *Hyde Leadership*, supra, slip op. at 7-8. Further, we disagree with our colleague's view that the Board should decline to exercise jurisdiction over charter

MARK GASTON PEARCE,

MEMBER

LAUREN McFERRAN,

MEMBER

Dated, Washington, D.C., February 1, 2017

Acting Chairman Miscimarra, dissenting:

I would grant the Employer's Request for Review and dismiss the petition. The Employer operates a New Orleans, Louisiana charter school chartered by the Louisiana Board of Elementary and Secondary Education, a state-wide elected body, pursuant to the Louisiana Charter School Demonstration Programs Law. Under Louisiana law and federal regulations, the Employer is a "local education agency," a status that makes it equivalent to a public school board. See La. R.S. 17:3995(H); 34 C.F.R. Sec. 303.23(a). Thus, for reasons fully explained in my dissenting opinion in *Hyde Leadership Charter School-Brooklyn*, 364 NLRB No. 88, slip op. at 9-16 (2016) (Acting Chairman Miscimarra, dissenting), I believe that the Employer is a political subdivision of the State of Louisiana 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 believe that the Board should in any event decline jurisdiction over the Employer, and other 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) (Acting Chairman Miscimarra, dissenting), and *Hyde Leadership Charter School-Brooklyn*, above, slip op. at 14-16 (Acting Chairman Miscimarra, dissenting). Declining jurisdiction is particularly appropriate in this case, because more than 90 percent of all New Orleans public school students currently attend public charter schools like the Employer. In my view, that, along with other factors, underscores that the New Orleans public charter schools are "essentially local in nature" and "peculiarly related to, and regulated by, local governments." *Pennsylvania Virtual Charter School*, above, slip op. at 13 (quoting *Hialeah Race Course*, 125 NLRB 388, 391 (1959) and 38 Fed. Reg. 9537, 9537 (1973)).

PHILIP A. MISCIMARRA,

ACTING CHAIRMAN

schools in New Orleans because the operation of these schools is essentially local in nature, for the reasons the Board discussed in *Pennsylvania Virtual*, slip op. at 9-10.