

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION FOUR**

NEW FOUNDATIONS CHARTER SCHOOL	:	
	:	
Employer,	:	
	:	
and	:	Case 04-RC-199928
	:	
PHILADELPHIA ALLIANCE OF CHARTER SCHOOL EMPLOYEES, LOCAL 6056, AFT-PA, AFT, AFL-CIO	:	
	:	
Petitioner.	:	
	:	

**EMERGENCY MOTION TO STAY ALL PROCEEDINGS
AND IMPOUND THE BALLOTS**

The Employer New Foundations Charter School (“New Foundations” or “Employer”), by and through its undersigned counsel, hereby submits this Emergency Motion to Stay all Proceedings and to Impound the Ballots, pursuant to Section 102.67(j) of the Rules and Regulations of the National Labor Relations Board, in the instant matter and submits the following in support thereof:

1. On June 2, 2017 Petition filed by Petitioner Philadelphia Alliance of Charter School Employees, Local 6056, AFT-PA, AFT, AFL-CIO (“Petitioner”) under Section 9(c) of the National Labor Relations Act (“NLRA” or “the Act”) seeking to represent a unit consisting of: “Group A: All full-time and regular part-time professional employees, including: Teachers, Nurses, and Counselors employed at the Employer's New Foundations Charter High School building,” and “Group B: All full-time and regular part-time Aides, Maintenance Workers, and Office Staff employed at the Employer's New Foundations Charter High School building.” See June 2, 2017 RC Petition at Board Exhibit 1.

2. In its Statement of Position, New Foundations raised a challenge to the jurisdiction of the National Labor Relations Board (“NLRB”) over the Employer and pursuant to Section 2(2) of the National Labor Relations Act (“NLRA”), and also challenged the appropriateness of the proposed bargaining unit because the Employer did not believe it was appropriate to include only staff in one building into a potential bargaining unit. See Statement of Position at Board Exhibit 3.

3. As a result, a hearing was held on June 14, 2017 before a Hearing Officer in Region Four regarding the Employer’s challenge to jurisdiction and the appropriateness of the proposed bargaining unit. See June 14, 2017 Transcript of Hearing (“Tr.”).

4. A Decision by the Regional Director was issued on July 7, 2017, which concluded that the Employer was subject to jurisdiction under the NLRA and was not exempt under Section 2(2) of the NLRA, and further concluded that, under the single-facility presumption and the community of interest standard in Specialty Health Care & Rehabilitation Center of Mobile, 357 NLRB 934 (2011), the proposed bargaining unit consisting only of employees working in the 9-12 building was appropriate. The Decision has ordered that a mail ballot election be held, which will conclude on August 10, 2017. See July 7, 2017 Decision.

5. The Decision by the Regional Director failed to consider the unique establishment and chartering process of New Foundations grades 9-12, which makes the facts in the instant matter critically distinguishable from the facts in the previous Pennsylvania Virtual Charter School, 364 NLRB No. 87 (2016)(“PA Virtual”) matter.

6. New Foundations is a public brick-and-mortar charter school unlike the cyber charter school in PA Virtual. Id.; see also Joint Exhibit A. More specifically, New Foundations is a brick-and-mortar charter school within the School District of Philadelphia (“Philadelphia” or

“SDP”), which means that the chartering process for New Foundations varies significantly from the cyber charter in the PA Virtual matter and also from Pennsylvania brick-and-mortar public charter schools located outside of Philadelphia. Philadelphia is the only school district of the First Class in the entire Commonwealth of Pennsylvania. 24 P.S. § 6-696. As a result, it is also the only school district that is overseen by the School Reform Commission (“Commission” or “SRC”) and the only district where public charter schools are approved, overseen, regulated and renewed and/or revoked directly by the Commission.

7. Despite this important factual distinction, the Regional Director did not consider the differences between the chartering process for the brick-and-mortar public charter, and specifically one within the SDP, versus the chartering process for the cyber charter school charter school in the PA Virtual case.

8. The failure to consider these critical factual distinctions formed the basis of the Regional Director’s conclusion that jurisdiction over the Employer in this matter is appropriate and that New Foundation is not an exempt political subdivision under Section 2(2) of the NLRA.

9. For the reasons discussed in detail in the Employer’s Request for Review, to be filed simultaneously to this Emergency Motion, the Regional Director erred in concluding that only the “high school” building or grades 9-12 of the Employer are subject to jurisdiction under Section 2(2) of the NLRA.

10. In addition to the failure to consider the critical factual distinctions in the instant matter, the Decision issued by the Regional Director is also based upon factual finding that erroneous and unsupported by the record.

11. Despite that the CEO of New Foundations provided express testimony, during the hearing in this matter, that he works in both the K-8 and 9-12 buildings daily, the Regional

Director concluded that the CEO of New Foundations, Paul Stadelberger (“Mr. Stadelberger”) was “not present daily” at the 9-12 grade building. Mr. Stadelberger testified that each work day he is physically within and working out of both the K-8 and the 9-12 building. June 14, 2017 Transcript (“Tr.”) at 107:7-21. Both witnesses who testified on behalf of Petitioner also acknowledged that Mr. Stadelberger is in each building daily and has an office within the 9-12 building. Tr. at 176:7-13, 190:2-6, 199:8-11. As a result, the conclusion by the Regional Director on this substantial factual issue was erroneous and an abuse of his discretion. Given that the Regional Director utilized that factual conclusion as a basis for applying a single facility presumption, this factual error, among others, has substantially prejudiced New Foundations.

12. New Foundations currently operates out of one campus location in Philadelphia, Pennsylvania, that had two adjacent buildings that are directly across the street and less than 75 feet apart. Tr. at. 105:21-23. The buildings both have entrances located on Rhawn Street and are separated only by this local road. Tr. at. 30:5-25, 50:11-14.

13. The application of the single-facility presumption by the Regional Director in his Decision in this matter was not appropriate.

14. Given the (a) shared community of interest between the staff members on the one campus location and within the only two buildings in which New Foundations operates, and (b) the fact that New Foundations is only one charter school operating one K-12 school at only one location, the Board must stay the proceedings in this matter and the impound all of the ballots received in the mail election to ensure the election provides an opportunity for all employees who should be included into a proposed bargaining unit the opportunity to cast a ballot.

15. For the reasons discussed in detail in the corresponding Request for Review filed on behalf of New Foundations, the election must include all employees in the petitioned-for job

classifications or positions regardless of the building location where the employees are currently working.

16. New Foundations can only operate as one single K-12 school and has always had the intention of having the entirety of its staff operating out of one building. Tr. at. 11:15-12:2, 29:4-9, 31:1-3, 35:1-5; 37:8-12, 39:3-6, 59:3-7, 106:14-21; Employer Exhibit 2; Employer Exhibit 4.

17. As discussed in the Request for Review, the operation of New Foundations in only two buildings on one campus location is distinguishable from previous case law precedent and must be reviewed and reconsidered by the Board.

18. The Decision issued by the Regional Director in the instant matter was prejudicial to New Foundations, contains erroneous conclusions of fact, and raises substantial issues and questions of law and policy warranting review and must, therefore, be reviewed by the Board pursuant to Section 102.67(j) of the Rules and Regulations of the NLRB.

19. A failure to stay the proceedings and impound the ballots in this matter would result in an election consisting only of staff members currently working the building where students in grades 9-12 are educated.

20. However, there are staff members who currently working in both buildings, staff members who may transfer from one building to the other and the likelihood that all staff members will be working in the same single building in the near future. Id; see also Tr. at. 26:14-16, 107:13-21.

21. To proceed with the election would be prejudicial to New Foundations, as it is currently challenging the appropriateness of the bargaining unit, and would be highly prejudicial to employees currently working out of the K-8 building (on the same campus location) who will

have no voice in the outcome of the election process or the future potential bargaining unit, but who should have been included into the proposed bargaining unit.

22. In addition, proceeding with the current election will create the need for ongoing and continuous litigation relating to whether employees working in both buildings must be included into a future potential bargaining unit and/or whether employees who transition into or out of the high school building would be included or excluded.

23. A failure to stay the proceedings and/or impound the ballots may result in a potential future bargaining unit that may at some point in the future be determined by the Board to be inappropriate and/or not subject to jurisdiction of the Board.

24. New Foundations is currently on summer break and, therefore, a stay of the proceeding and impounding the ballot will not have any or only very minimal immediate impact as the vast majority of the employees to be included into a potential bargaining unit are not actively working during this summer break period. Tr. at 204:18-205:5.

25. There is precedent for this request as all mail ballots were impounded in the previous PA Virtual matter pending the outcome of Request for Review in that matter and were not counted until the Board concluded jurisdiction was appropriate. PA Virtual, 364 NLRB No. 87 (2016),

26. New Foundations should not be obligated to proceed with an election and/or to proceed to collective bargaining, should a bargaining unit be certified, while the issues of whether the Board has jurisdiction over this employer and whether the single-facility presumption was appropriately applied remain unresolved in this matter.

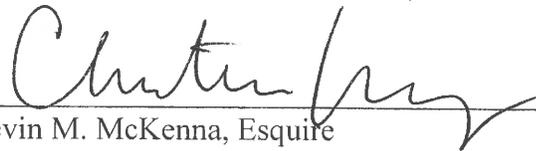
27. To proceed with the election and a failure to impound the ballots pending the outcome of the Request for Review would expend significant time and resources of both New Foundations and the Petitioner and substantially interfere with the Employer's operations.

28. Pursuant to Section 102.67(j), New Foundations now files this Motion to Stay all Proceedings and Impound the Ballots pending a decision by the Board on its Request for Review.

WHEREFORE, New Foundations respectfully requests that the Board provide expedited consideration of this Emergency Motion to Stay all Proceedings and Impound the Ballots, and issued an Order in this matter: (a) granting the Request for Review filed on behalf of New Foundations, (b) staying all further proceedings, including the mail ballot election scheduled to conclude on August 10, 2017; (c) impound the ballots collected and scheduled to be counted on August 11, 2017 and (d) staying all further proceedings in this matter because (1) substantial issues and questions of law and policy have been raised and warrant review by the Board; and (2) the Decision of the Regional Director was based on erroneous findings of facts on substantial issues that are prejudicial to New Foundations.

Respectfully submitted,

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Date: July 21, 2017

Counsel for Employer, New Foundations Charter
School

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Emergency Motion to Stay All Proceedings and Impound the Ballots filed on behalf of the Employer New Foundations Charter School, was served on July 21, 2017, upon the following individuals via Electronic Mail and First Class Mail:

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LATSHA DAVIS & McKENNA, P.C.

Dated: July 21, 2017

By: 
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