

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4

NEW FOUNDATIONS CHARTER SCHOOL, INC.

Employer

and

Case 04-RC-199928

PHILADELPHIA ALLIANCE OF CHARTER
SCHOOL EMPLOYEES, LOCAL 6056, AFT-PA,
AFT, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, a charter school, attacks the Union's petition to represent its high school employees as beyond the Board's jurisdictional reach, and as too narrow in scope because it does not include employees of a second school. On both counts, its arrows miss the target. The Employer was created by a private individual and is operated by a Board of Trustees that is not selected or subject to removal by public officials, so under Board law the Employer is not a public entity and is therefore subject to Board jurisdiction. The petitioned-for unit which is limited to employees in the Employer's high school, and does not include the K-8 school on the same campus, is appropriate because the Employer has not rebutted the single-facility presumption and, alternatively, has not met its burden under the *Specialty Healthcare* decision of showing that the K-8 employees share an "overwhelming community of interest" with the employees in the high school. Accordingly, as set forth below, I shall direct an election in the petitioned-for unit.

Petitioner Philadelphia Alliance of Charter School Employees seeks an election in a unit of teachers, nurses, counselors, aides, maintenance workers and office staff¹ employed by the Employer, New Foundations Charter School, at its high school in Philadelphia, Pennsylvania. The Employer opposes the petition on two grounds: first, that the Employer is exempt from the Board's jurisdiction as a political subdivision pursuant to the Supreme Court's decision in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971), and second, that even if the Board does have jurisdiction, the petitioned-for unit is inappropriate because it does not include employees at a separate facility, the Employer's kindergarten through eighth grade school. The Employer contends that those employees share an overwhelming community of interest with high school employees.

¹ The parties stipulated, and I find, that the teachers, nurses and counselors involved in this matter are professional employees within the meaning of Section 2(12) of the Act, and the aides, maintenance workers and office staff are non-professional employees within the meaning of the Act. Because the Petitioner seeks an election in a mixed professional/non-professional bargaining unit, *Sonotone* election procedures are applicable as explained below in Section IV.

A hearing officer of the Board held a hearing in this matter and the parties presented a joint stipulation of facts as to the jurisdictional issue. The parties also presented oral argument at hearing and filed post-hearing briefs on the unit issue. In this decision, first I will provide an overview of the Employer's operations. I will then examine whether the Board has jurisdiction under the *Hawkins County* test and its progeny. Finally, I will address the unit issues presented under both the single-facility presumption and the framework articulated in *Specialty Healthcare*. Having considered the record evidence, arguments presented by the parties and relevant Board law, I conclude, as discussed below, that the Employer is not exempt from the Board's jurisdiction under the *Hawkins County* test, and that the petitioned-for unit is appropriate under both the single-facility presumption and *Specialty Healthcare*.

I. THE EMPLOYER'S OPERATIONS

The Employer operates a public charter school in Philadelphia for students in kindergarten through twelfth grade under a contract with the School District of Philadelphia. Most of the school's students are residents of Philadelphia who were admitted by lottery, although some live outside Philadelphia. No students pay tuition. The students are housed in two buildings: one for kindergarten through eighth grade (the K-8 school) and the other for ninth through twelfth grade (the high school). There are approximately 660 students enrolled in the K-8 school and 740 students enrolled in the high school. The Employer receives funding from the School District of Philadelphia, which in turn derives funds primarily from the Commonwealth of Pennsylvania and City of Philadelphia.²

Governance and operation of the Employer are vested in its Board of Trustees (BOT) and Chief Executive Officer (CEO) Paul Stadelberger. Stadelberger reports to the BOT. Each of the two schools has its own principal who reports to Stadelberger, with Bill Schilling serving as the principal of the high school and Shira Woolf Cohen serving as the principal of the K-8 school. Additional administrators report to the BOT through Stadelberger, including Chief Academic Officer, who oversees the curriculum and professional development in both schools, Dean of Students, who is responsible for students in grades nine through twelve, and Director of Special Education, who oversees all special education teachers.

The Facilities

The Employer operates out of two buildings: the high school, for grades nine and above, and the K-8 school, for students below ninth grade. When the Employer commenced operations in the year 2000, it provided education only for students in kindergarten through eighth grade, and operated out of one facility located at 8001 Torresdale Avenue in Philadelphia. The Torresdale Avenue facility continues to house the K-8 school today. Beginning in 2010, pursuant to authorization by the School Reform Commission, the Employer began to expand by adding an additional grade annually, starting with ninth grade. That year, the ninth grade classes were held at the Torresdale Avenue building. Thereafter, to accommodate the additional students

² The parties stipulated, and I find, that the Employer meets the applicable commerce standard for educational institutions.

associated with added grade levels, the Employer temporarily leased properties for grades nine and above until 2013, when the Employer permanently relocated the high school to 3850 Rhawn Street in Philadelphia.

The High School

The high school building serves only students in grades nine through twelve. The high school employs approximately 42 teachers, two counselors, one school nurse, one social worker, two maintenance employees, six aides (one lunch aide, and five non-teaching assistants), and two office employees/administrative assistants. High school employees' hours are 6:30 a.m. to 2:30 p.m., and they park in the high school parking lot. Although Stadelberger maintains an office there, he is not present daily. When he is not there, his office is used for various other purposes, including by the psychologist twice a week, for individualized education plan or IEP meetings approximately once per week, and for special education services.

K-8 School

The K-8 school building serves only students in grades kindergarten through eighth grade. After eighth grade, about 90% of the students automatically matriculate to the high school. However, that group represents only about 45% of the high school student population, with the remainder selected by lottery from applicants outside the school. The K-8 school employs approximately 45 teachers, two counselors, one school nurse, one librarian, 25 class, recess and lunch aides, and two office employees/administrative assistants. Stadelberger's primary office is at the K-8 building. Employees at the K-8 school work from 7:45 a.m. to 3:45 p.m. and park in their own school parking lot.

II. JURISDICTION

A. Relevant Legal Decisions

Section 2(2) of the Act expressly excludes "any State or political subdivision thereof" from the definition of "employer." The term "political subdivision" is not defined in the Act. In *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971), the Supreme Court adopted the Board's test for whether an entity is an exempt political subdivision of a state. Pursuant to this test, an entity is exempt only if it is either: (1) created by a state, so as to constitute a department or administrative arm of the government; or (2) administered by individuals who are responsible to public officials or to the general electorate. *Id.* at 605; *The Pennsylvania Virtual Charter School*, 364 NLRB No. 87, slip op. at 3 (2016). In *Hawkins County*, the Supreme Court found that federal law under the National Labor Relations Act, not state law, is controlling in determining whether an entity is a political subdivision and thus not an "employer" subject to the Act. The Court stressed that the Board should examine the entity's actual operations and characteristics when assessing its Section 2(2) status. *Id.* at 603-604, adopting the holding of *NLRB v. Randolph Electric Membership Corp.*, 343 F.2d 60, 62-63 (4th Cir. 1965).

The question of whether Pennsylvania charter schools fall within the Board's jurisdiction has been previously litigated and decided. Recently, the Board affirmed my decision in *Pennsylvania Virtual Charter School* to exercise jurisdiction over a charter school created and operated pursuant to the Charter School Law (CSL) of the Pennsylvania Public School Code, 24 P.S. §§17-1700 *et seq.* *Pennsylvania Virtual Charter*, supra. Applying the first part of the *Hawkins County* test, the Board determined that the school was not created directly by the Commonwealth to be an administrative arm of the government, but instead by private individuals as a non-profit corporation. *Pennsylvania Virtual*, supra, slip op. at 6. The Board likened the school's charter to operate an independent public school to that of a government subcontractor, over which the Board routinely asserts jurisdiction. *Id.* at 5-6. Under the second prong of the *Hawkins County* test, the Board adopted the reasoning in *Charter School Administration Services*, 353 NLRB 394 (2008) and found that the inquiry is whether a majority of individuals who administer the school and governing board are appointed by and subject to removal by public officials. *Pennsylvania Virtual Charter*, supra, slip op. at 7. Applying the test, the Board found that the board of trustees for the school was created by internal bylaws and was self-perpetuating, because appointment and removal of the Board members as well as other school administrators was vested in other Trustee members by majority vote. *Id.* at 8. Further, none of the Board members were public officials and their regulation by the Secretary of Education was not enough to find that the school was accountable to a public official, where no public official had the authority to appoint or remove a trustee. *Ibid.* The Board further found that charter schools have a substantial impact on commerce, and that even though charter schools may be subject to state and local regulatory oversight, they are similar to government contractors, over which the Board asserts jurisdiction. *Id.* at 9-10.

Further, in *The Pennsylvania Cyber Charter School*, 06-RC-120811 (February 14, 2014), the Regional Director for Region Six rejected a claim that a charter school created under Pennsylvania law was a political subdivision, and asserted jurisdiction over it. In an unpublished order, the Board denied review. 2014 WL 1390806 (April 9, 2014). Similarly, the Board denied review of the Acting Regional Director for Region Four's decision in *Agora Cyber Charter School*, 04-RC-179402 (April 5, 2016), to assert jurisdiction over a cyber charter school created under Pennsylvania law. 2016 WL 6821478 (November 16, 2016). In *John B. Stetson Charter School*, 04-RC-151011 (May 14, 2015),³ I found that a charter school organized under Pennsylvania law was not exempt from the Board's jurisdiction.

B. Application of *Hawkins County* and its progeny to facts of this case.

The Employer argues that it is exempt from the Board's jurisdiction under both prongs of the *Hawkins County* test. First, the Employer asserts that it was created by the Commonwealth of Pennsylvania, and is therefore a political subdivision under the first prong, because its charter was issued and approved by the School Reform Commission (SRC). Under the second prong of *Hawkins County*, the Employer argues that it is overseen by public officials, namely, the

³ The employer's request for review in that case became moot after the petitioner withdrew the petition.

Employer's BOT, pursuant to the plain language of 24 P.S. § 17-1715A(11), which provides that "Trustees of a charter school shall be public officials." Moreover, the Employer argues that the BOT reports to other public officials such as the Secretary of Education, and that it is required to follow additional state reporting requirements. The Employer contends that it is unlike a government contractor and different from other private contractors because of the limited scope of its operations and its inability to negotiate certain agreements. Lastly, the Employer argues that it is subject to the Pennsylvania Public Employee Relations Act (PERA) and not the NLRA.

Having reviewed the record, I see no material difference between the Employer in this case and the employer in *Pennsylvania Virtual Charter*, along with the employers in other Pennsylvania charter school cases cited above where jurisdiction was asserted. The record is clear that the Employer was not created by the Commonwealth of Pennsylvania, and its BOT is not comprised of state officials. Further, the Employer's state reporting requirements are not sufficient to render the Employer a creation of the state for purposes of NLRB jurisdiction. For the reasons outlined below, I find that the Employer does not qualify as a political subdivision as the term is defined by the law, and therefore it is appropriate to assert jurisdiction under Section 2(2) of the Act.

1. Applicable Pennsylvania Statutes

In 1997, the Pennsylvania legislature amended the Public School Code (PSC)⁴ to include a provision for the establishment of charter schools. Article XVII, known as the Charter School Law (CSL),⁵ sets forth the process by which a charter school can be established or an existing school can be converted into a charter school. Schools that operate under a charter in Pennsylvania are divided into three general types: charter schools, regional charter schools, and cyber charter schools. As defined by the CSL, a charter school is "an independent public school established and operated under a charter from the local board of school directors and in which students are enrolled or attend." A charter school must be organized as a public, nonprofit corporation, as a charter may not be granted to a for-profit entity.⁶

A charter school may be established by: an individual; one or more teachers who will teach at the proposed school; parents or guardians of students who will attend the charter school; any nonsectarian college, university or museum located in the Commonwealth; any nonsectarian corporation not-for-profit; any corporation, association, or partnership; or any combination thereof.⁷ A charter school may be established by creating a new school or by converting an existing public school or a portion of an existing public school.⁸ Applications to establish a

⁴ P.L. 30, No. 14 (1949).

⁵ 24 P.S. Sections 17-1700, *et seq.*

⁶ 24 P.S. Section 17-1703-A.

⁷ 24 P.S. Section 17-1717-A(a).

⁸ 24 P.S. Section 17-1717-A(a).

charter school are submitted to the local school board of the district where the charter school will be located.⁹

Local school boards are required to conduct annual reviews to determine whether charter schools are meeting the goals of their charter agreements, and they are entitled to have access to charter school facilities and records to ensure compliance with the agreements.¹⁰ Charter schools must submit annual reports to the local boards to assist the boards in evaluating compliance.¹¹ A school board can revoke a charter agreement during its term for material violations of the agreement; failure to meet either statutory requirements regarding student performance or generally accepted standards of fiscal management; violations of law; or fraud.¹² Charter schools are given the right to appeal any attempted revocation through an administrative procedure and the state courts. If the revocation is successful, the charter school is dissolved and any assets remaining after the satisfaction of the school's financial obligations are distributed to "the school entities with students enrolled in the charter school for the last full or partial school year." However, neither the school entities nor the state are liable for any unpaid obligations of a dissolved charter school.¹³

Under the CSL, the board of trustees of a charter school has the authority to decide matters related to the operation of the school, including, but not limited to, budgeting, curriculum and operating procedures, subject to that school's charter. It has the authority to employ, discharge, and contract with necessary professional and nonprofessional employees, subject to the school's charter and applicable law.¹⁴ The CSL provides that trustees of a charter school shall be deemed "public officials" and that an administrator or CEO shall be deemed a "public official" for the purposes of ethics standards and financial disclosure under prevailing Pennsylvania law.¹⁵ For purposes of tort liability, employees of a charter school are also considered "public employees" and the board of trustees is considered a "public employer."¹⁶

With respect to staffing, the CSL states that the board of trustees shall determine the level of compensation and all terms and conditions of employment of the staff. It further provides that employees of a charter school may organize under the Pennsylvania Public Employee Relations Act.¹⁷ According to the CSL, collective-bargaining units at a charter school shall be separate from any collective-bargaining unit of the school district in which the charter school is located and shall be separate from any other collective-bargaining unit.¹⁸

⁹ 24 P.S. Section 17-1717-A(c).

¹⁰ 24 P.S. Section 17-1728-A.

¹¹ 24 P.S. Section 17-1728-A.

¹² 24 P.S. Section 17-1729-A.

¹³ 24 P.S. Section 17-1729-A.

¹⁴ 24 P.S. Section 17-1716-A(a).

¹⁵ 24 P.S. Sections 17-1715-A(11) and (12).

¹⁶ 24 P.S. Section 17-1727-A.

¹⁷ 24 P.S. Section 17-1724-A(a)

¹⁸ 24 P.S. Section 17-1724-A(a).

As to employee benefits, the CSL provides that all employees of a charter school shall be enrolled in the Public School Employees' Retirement System (PSERS) unless, at the time of the application for the charter school, the sponsoring district or the board of trustees of the charter school has a retirement program which covers the employees. The Commonwealth makes contributions on behalf of charter school employees and the charter school makes payments to Social Security for the employees.¹⁹

2. *The Employer was not created by the Commonwealth to constitute a department or administrative arm of the government.*

To determine whether an entity is a political subdivision under the first arm of the *Hawkins County* test involves a two-part inquiry: first, whether the entity was created directly by the state, such as by a government entity, legislative act or public official; and if so, whether the entity was created to constitute a department or administrative arm of the government. See *Pennsylvania Virtual Charter*, supra, slip op. at 5-6; *Hyde Leadership Charter School – Brooklyn*, 364 NLRB No. 88, slip op. at 5 (2016). Similar to *Pennsylvania Virtual Charter*, the Employer here was not created by a government entity, legislative act, or government official; rather, the record establishes that the Employer was created by an individual, and therefore fails the first prong of the *Hawkins County* analysis.

R.W. Worthington, a private individual, founded the Employer as a nonprofit corporation under Pennsylvania Nonprofit Corporation Law²⁰ on October 29, 1999. Originally named the "Model Educational Charter Academy, Inc.," on April 13, 2000, and after an initial name change, the Employer's name was amended to its current designation, "New Foundations Charter School Inc." As described in its corporate bylaws, the Employer's purpose is to "establish and maintain a school to operate independently from the existing school district structure in order to provide both an academic education and career development without regard to race, color, or creed to students attending grades 9 through 12 in fields related to mathematics, science and technology in order that they shall meet the graduation requirements of the Commonwealth of Pennsylvania."

On September 10, 2000, the Employer entered into a charter contract for New Foundations Charter School with the School District of Philadelphia. The Employer's charter was renewed by the School Reform Commission in 2004, 2009 and 2014. Originally, the charter only allowed for education of kindergarten through eighth grade students. However, in 2010, the Employer was approved by the SRC to add ninth grade, and was subsequently granted the ability to add an additional grade level per year up to grade twelve by further authorization of the SRC.

The Employer argues that it was created directly by the Commonwealth as part of the public educational system under Pennsylvania CSL, 24 P.S. §§17-1701-A, *et seq.*, and therefore should not be subject to the Board's jurisdiction. Regional Directors and the Board have routinely asserted jurisdiction over Pennsylvania charter schools created under similar

¹⁹ 24 P.S. Section 17-1724-A(c).

²⁰ 15 Pa.C.S. Section 5306.

circumstances by individuals who incorporated under the Pennsylvania nonprofit corporation law. See *Pennsylvania Virtual Charter*, supra; *Pennsylvania Cyber Charter*, supra; *Agora Cyber Charter*, supra. Moreover, the Board has consistently held that non-profit corporations created by private individuals are not exempt under the first prong of the *Hawkins County* test. See *Hyde Leadership Charter*, supra at 5; and *Research Foundation of City University of New York*, 337 NLRB 965, 968 (2002) (asserting jurisdiction where private individuals created the employer as a nonprofit under New York State Educational Law; the employer was acting as a government contractor). Similarly here, the Employer was created by private individual R.W. Worthington, who incorporated the Employer as a Pennsylvania nonprofit corporation, and the BOT, who promulgated the school's governing and operating documents.

The Employer further argues that unlike the facts of *Pennsylvania Virtual Charter*, the Employer's high school was not founded or created by a private individual, as its creation occurred after the charter school was already operational. I find this argument analogous to the argument the Board rejected in *Pennsylvania Virtual Charter* when it held that subsequent renewals by state actors of the school's charter do not establish that the school was formed by the state. See *Pennsylvania Virtual School*, supra, slip op. at 6. The initiative to establish the Employer was undertaken by a private individual, and thus there was no enabling action by the Commonwealth. I am similarly not persuaded by the Employer's argument that the facts here are distinguishable because the Employer operates a 'brick and mortar' charter school rather than a cyber charter school. There is no evidence that this difference is germane to the analysis under relevant Board law. As in those cases, the record is clear that the Employer was established by the actions of private individuals, not any mandate of or action by a government entity. Cf. *University of Vermont*, 297 NLRB 291, 295 (1989) (finding the University of Vermont exempt under the first *Hawkins County* prong where the University was created by a special act of the Vermont legislature).

Furthermore, contrary to the Employer's assertion, an entity is not exempt simply because it receives public funding or operates pursuant to a contract with a governmental entity. *Pennsylvania Virtual Charter*, supra, slip op. at 5. The financial support of state and local governments is not dispositive of the jurisdictional question. See *Connecticut State Conference Board*, 339 NLRB 760, 763 (2003); *FiveCAP, Inc.*, 331 NLRB 1165, 1168 (2000). The majority of the Employer's funding comes from state public funds provided pursuant to the funding method outlined in 24 P.S. §17-1725-A. However, the Employer cannot levy or raise taxes.

Moreover, as the Board noted in *Pennsylvania Virtual Charter*, the fact that Pennsylvania state statutes describe charter school trustees and administrators as "public officials," designate charter schools as "public employers," and grant charter school employees the right to organize under the Pennsylvania Public Employee Relations Act (PPERA) (24 P.S. §§ 17-1715-A(11) and (12), 17-1727-A and 17-1724-A(a)) is not determinative of the jurisdictional issue under *Hawkins County*. *Pennsylvania Virtual Charter*, supra, slip op. at 6 fn. 16 (stating "the fact that the CSL provides that employees of a charter school may organize pursuant to Pennsylvania's Public Employee Relations Act is not controlling in determining whether [the employer] is an administrative arm of the government where the state itself is not operating the School"). The Board explained that the legislature's characterization of the charter schools as "an independent

public school” or administrators as “public officials” was not controlling, and that “federal, not state, law [] governs the determination of whether an entity created under state law is a political subdivision within the meaning of Section 2(2) of the Act.” *Id.*, slip op. at 6; see also *Pennsylvania Cyber Charter*, supra at 2. In addition, contrary to the Employer’s argument, I do not find that the language of the CSL reflects the Commonwealth’s intent to treat charter schools as part of the public educational system and therefore a state entity. *Pennsylvania Virtual Charter*, supra, slip op. at 7.

Accordingly, the Employer has failed to show that there is no jurisdiction under the first prong of the *Hawkins County* test.

3. *The Employer is Not Administered by Individuals Who Are Responsible to Public Officials or to the General Electorate.*

Under the second part of the *Hawkins County* test, an entity will be deemed an exempt political subdivision, even if it was not created directly by the state, provided it is administered by individuals who are responsible to public officials or the general electorate. *Hawkins County*, 402 U.S. at 605; *Research Foundation of the City University of New York*, 337 NLRB 965, 969 (2002). In *Pennsylvania Virtual Charter*, the Board adopted the reasoning of *Charter School Administration Services*, 353 NLRB 394 (2008), and held that the determinative inquiry is whether governing board members are appointed by or subject to removal by any public official. See *Pennsylvania Virtual Charter*, supra, slip op. at 7.²¹ If governing board members are not appointed or subject to removal by public officials, then the inquiry ends there. *Ibid.* The Board in *Pennsylvania Virtual* summarized the reasoning of *Charter School Administration Services* as follows:

[I]n determining whether an entity is administered by individuals who are responsible to public officials or the general electorate, the “relevant inquiry” is whether a majority of the individuals who administer the entity--the governing board and executive officers--are appointed by and subject to removal by public officials. The Board examines whether the composition, selection, and removal of the members of an employer's governing board are determined by law, or solely by the employer's governing documents.

²¹ This is in line with prior Board cases which have consistently asserted jurisdiction in cases where public officials have no role in the selection and removal of an employer’s officers or directors. See, e.g., *Research Foundation of the City University of NY*, supra, at 969-970 (Board asserted jurisdiction where none of the employer’s board members were appointed or subject to removal by public officials); *Cape Girardeau Care Center*, 278 NLRB 1018, 1019-1020 (1986) (Board asserted jurisdiction where the county’s approval of the employer’s board of directors was “purely ministerial” and the county had “no greater authority to remove one of the [e]mployer’s board members than to remove a board member of any other nonprofit corporation”). Cf. *Regional Medical Center at Memphis*, 343 NLRB 346, 358-360 (2004) (no jurisdiction where employer was administered by publicly appointed and removable officials).

Pennsylvania Virtual Charter, supra, slip op. at 9.

The Employer argues that it should be exempt under the second prong of *Hawkins County* because it is administered by BOT members who are classified as public officials under Pennsylvania law, and who are responsible to public officials or the general electorate. Contrary to the Employer's assertions, I find that the record establishes that the Employer is administered by an independent Board of Trustees who govern the operations of the school and are not subject to removal or appointment by government officials. Further, I am not persuaded that the members of the BOT are public officials.

Under the Pennsylvania CSL, a charter school's board of trustees is given the power to decide matters related to the operation of the school:

The board of trustees of a charter school shall have the authority to decide matters related to the operation of the school, including, but not limited to, budgeting, curriculum and operating procedures, subject to the school's charter. The board shall have the authority to employ, discharge, and contract with necessary professional and nonprofessional employees, subject to the school's charter and provisions of this article.²²

Both the Employer's corporate bylaws and its charter agreement with the School District of Philadelphia confirm that the Employer's BOT has the authority to determine all issues involving school operations. Additionally, the Employer's corporate bylaws establish that it has the authority to appoint and remove BOT members.

The method of selection of the Employer's BOT is dictated by its bylaws, and not by any law, statute, or governmental regulation. The bylaws dictate the number, term of office, and election practice for the BOT. They provide that the BOT will comprise no less than seven and no more than nine members, although the number of members may be altered by resolution of the BOT. BOT members serve four-year terms, unless filling in for the remainder of a term due to a vacancy. Pursuant to the bylaws, vacancies in the BOT are filled by election of the sitting BOT, "[u]pon the expiration of a term of a trustee, the vacancy on the Board shall be filled at the annual meeting by an election among the remaining trustees present." In the event of a mid-term vacancy, the BOT has the authority to elect a new member through a regular or special meeting. The record is devoid of any evidence that the BOT has ever deviated from this process.

Additionally, through the bylaws, the BOT retains the sole authority to remove members by majority vote. BOT members may also elect to resign from the BOT. The record contains no evidence of BOT member removal, but does contain an instance of member resignation. That resignation was precipitated when an auditor for the City of Philadelphia suggested that two members of the BOT had a conflict of interest because they were members of both the Employer's BOT and the 8001 Torresdale Corporation board, a separate entity that serves as the

²² 24 P.S. Section 17-1716-A(a).

Employer's landlord. The Employer's bylaws specifically address member conflicts of interest. To avoid the potential conflict of interest, the members resigned from one of the boards, although the record is not clear as to which board. Notably, Stadelberger emphasized that the city controller did not remove anyone from the Board of Trustees. Moreover, in *Hyde Leadership Charter*, supra, slip op. at 7, the Board found that even where the Board of Regents for the Department of Education directly removed board members under circumstances governed by the charter agreement, the removal authority was based on governing documents and not on the law. It is apparent that the Employer's BOT governs its own membership and nothing in the record indicates that members of the Employer's BOT were either appointed by or can be removed by the Commonwealth or officials of the Commonwealth.

The Employer argues, however, that even if it is run by a privately appointed Board of Trustees, it is administered by the Commonwealth because Pennsylvania law characterizes charter school trustees as "public officials." The Board has indicated that while such legislative declarations are "worthy of careful consideration," they are "not controlling in determining whether an entity is a political subdivision." *Hinds County Human Resources Agency*, 331 NLRB 1401, 1404 (2000). The Employer was privately created and is clearly run by individuals who are not government officials and who do not report to government officials. No legislative pronouncement can alter this fact, and the State's declaration that the Employer's trustees are public officials does not transform the Employer into an arm of the government.

The Employer also argues that it is exempt because its BOT members are responsible to state officials, as the Employer must comply with various regulations and requirements imposed by both Pennsylvania law and its charter agreement, and because its charter was approved and is renewed by the SRC. The Employer and the BOT are admittedly subject to various state regulations and laws, including the Pennsylvania Public School Code, 24 P.S. §§1-101 *et seq.*, Pennsylvania Charter School Law, 24 P.S. §§ 17-1701-A *et seq.*, and other guidance and Basic Educational Circulars issued by the Commonwealth through the Pennsylvania Department of Education. The Employer must also comply with financial and audit reporting obligations, Pennsylvania open meeting laws and the Sunshine Act, and it must permit access to its records under the Right-to-Know Act, among other reporting and operating requirements. However, the Board in *Pennsylvania Virtual Charter* rejected a similar argument that the school there was responsible to a public official within the meaning of *Hawkins County* because it was "subject to oversight and regulation by the Secretary of Education," noting that the determinative factor in deciding whether an entity is run by individuals responsible to the government is whether the government appoints and can remove them. *Pennsylvania Virtual Charter*, supra, slip op. at 8. ("[c]ritically, nothing in the bylaws allows the Secretary of Education or any other public official to remove a trustee"); see also *Truman Medical Center v. NLRB*, 641 F.2d 570, 573 (8th Cir. 1981) (noting that the responsibility of the board of directors to public agencies, "while undoubtedly heavy, derive[d] from the contractual relations between [the hospital] and these political subdivisions, and is not the sort of direct personal accountability to public officials or to the general public required to support a claim of exemption under § 2(2)"). Since the employer in *Pennsylvania Virtual Charter* was not run by individuals who were government-appointed, the Board found that it did not qualify as a "political subdivision" even if it had to comply with extensive regulations. Similarly, the Employer's need to comply with many state laws,

regulations and reporting and operating requirements here is not sufficient to support a finding that the Employer is a political subdivision.

I find that the Employer has not established that it is administered by public officials, and that its BOT members are not subject to appointment or removal by public officials. Accordingly, it has not demonstrated that it is a political subdivision exempt from the Board's jurisdiction under Section 2(2) of the Act.

III. The Appropriate Bargaining Unit

The Employer asserts that it operates one integrated campus with two facilities that provide education for students in kindergarten through twelfth grade, with no substantial division between the two schools. As such, the Employer contends that the single-facility presumption should not be applied, and the only appropriate unit consists of all employees in both the K-8 and high schools. Upon review of the record, arguments of the parties, and relevant case law, I find, contrary to the Employer's assertions, that the single-facility presumption is applicable and the petitioned-for unit is appropriate under both that presumption and under a *Specialty Healthcare* analysis for the reasons outlined below.

A. Relevant Board Law

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness. To determine whether the single-facility presumption has been rebutted, the Board examines the following factors: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) functional integration of the facilities; (4) the degree of employee interchange; (5) the distance between locations; and (6) bargaining history, if any. See, e.g., *Trane*, 339 NLRB 866, 867 (2003); *J & L Plate, Inc.*, 310 NLRB 429, 429 (1993).

In its decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *enfd.* 727 F.3d 552 (6th Cir. 2013), the Board modified the framework to be applied when a petitioner seeks a unit consisting of employees readily identifiable as a group who share a community of interest, but another party seeks a broader unit. The party seeking the broader unit must demonstrate "that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit." *Supra*, 945-946. The additional employees share an overwhelming community of interest only where there is no legitimate basis upon which to exclude them from the unit because the traditional community-of-interest factors overlap almost completely. *Id.* at 944-945; *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB 2015, 2017 (2011).

The Board did not indicate in *Specialty Healthcare* whether the analytical framework in that case should apply to the issue here: whether a single-facility unit or multi-facility unit is appropriate for collective bargaining. Because the framework set forth in *Specialty Healthcare*

appears applicable, in addition to analyzing this case pursuant to the Board's traditional five-part test as described above, I will also analyze it using the *Specialty Healthcare* framework.

B. Single Facility Unit Analysis

In reaching the conclusion that the single-facility unit is appropriate, I rely on the following analysis and record evidence.

1. Central Control over Daily Operations and Labor Relations

The Board has made clear that “the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single local presumption.” *California Pacific Medical Center*, 357 NLRB 197, 198 (2011) (citations omitted). Thus, “centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. Instead, the Board focuses on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems.” *Hilander Foods*, 348 NLRB 1200, 1203 (2006) (citation omitted). Therefore, the primary focus of this factor is the control that facility-level management exerts over employees' day-to-day working lives.

The Employer maintains centralized control over many personnel and labor relations functions for both facilities. The BOT is responsible for the overall operations of both schools; it develops and implements a common budget and pay scale, determines personnel policies, and acts as the final decision maker for major personnel actions, such as hiring and discharge. The BOT also sets the school calendar and curriculum. CEO Stadelberger reports directly to the BOT. With BOT approval, Stadelberger oversees significant staff discipline, staff leave requests, reimbursement requests, and employment contracts for both facilities. The Chief Academic Officer and the Director of Special Education report to CEO Stadelberger and are responsible for their respective areas of expertise for all students in grades K-12.

Other terms and conditions of the employees are common to both schools. One employee handbook covers both facilities. Payroll is centralized, and all employees are required to sign in and out to log their working hours. Employees receive their pay and paystubs electronically. Employees are paid on a common pay scale based upon their classification. All professional employees receive a pay differential if they attain a Master's degree. And all employees are bound by a one-year employment contract which is renewed annually.

While there is much centralized control, there remains considerable local autonomy over daily operations and labor relations at each facility. Each facility is headed by a principal – Bill Schilling for the high school and Shira Woolf Cohen for the K-8 school – who exercises substantial authority and decision-making responsibility for his or her respective school.

CEO Stadelberger testified that the principals have discretion to make day-to-day decisions at their respective schools. For example, a principal may decide to change the daily lunch schedule by ten minutes or approve a request for immediate teacher relief in the classroom. In the high school, Principal Schilling is responsible for preparing teacher evaluations, addressing teacher concerns, conducting faculty meetings, and authorizing teacher call-outs for illness or emergencies. Two high school teachers testified that Principal Schilling is directly and integrally involved in management of the high school. To illustrate, when one teacher needed to leave the classroom early for an emergency, he contacted Principal Schilling who approved his early dismissal. In addition, testimony revealed that Principal Schilling is the only administrator who gives operational direction to the teachers, including when to report, what to teach, and how to behave in the classroom. Further, Principal Schilling directs teachers' duties outside the instructional period, such as requiring teachers to be stationed in the hallway between classes to monitor students. Moreover, one teacher explained that Principal Schilling "runs things on the fly," meaning when a teacher brings a question, concern or issue to Principal Schilling, he answers it immediately without having to consult with anyone else. Principal Schilling also directs the daily activity of aides, including both where they should work and when. Although CEO Stadelberger maintains a presence at the high school, teachers interact with him just a few times per week. In the K-8 school, Principal Woolf Cohen holds responsibilities similar to those of Principal Schilling: she is responsible for teacher evaluation, supervision, and call-outs.

Both principals are solicited to recommend renewal or non-renewal of professional contracts on a yearly basis with CEO and BOT approval. If an employment contract is not approved, the employee is effectively terminated. The record contains no evidence of that CEO Stadelberger ever refused to follow a principal's recommendation whether to renew a teacher's contract. While the Employer's CEO and BOT are involved in reviewing major discipline and hiring decisions, both principals have the authority and responsibility to recommend discipline, hiring and termination of employees in their respective schools.

It is clear, then, that the principals at each facility demonstrate significant autonomy in operating their schools on a day-to-day basis.

2. Similarity of Skills, Functions and Working Conditions

The similarity or dissimilarity of work, qualifications, working conditions, wages and benefits between employees at the two schools has some bearing on determining the appropriateness of the single-facility unit. However, this factor is less important than whether individual facility management has autonomy and whether there is substantial interchange. See, for example, *Dattco, Inc.*, 338 NLRB 49, 51 (2002) ("This level of interdependence and interchange is significant and, with the centralization of operations and uniformity of skills, functions and working conditions, is sufficient to rebut the presumptive appropriateness of the single-facility unit.").

The employees at the facilities in dispute do not share identical skills, functions or working conditions. However, as noted, all employees fall under a centralized administration, which leads to similarities in working conditions. All employees operate under the same

handbook, follow the same sign-in and sign-out procedure and receive the same benefits. According to the BOT policy manual, salaries in both schools are determined by classification, including Administrative; Instructional (teachers, counselors, nurses, psychologists, and therapists); Instructional Support Staff (teacher support assistants, classroom aides); and Operational Support Staff (secretaries, office clerks). Some minor differences in working conditions exist between the high school and K-8 employees. Employees in each school educate and serve a different population of students with different needs and challenges. Each facility maintains its own separate parking lot for employees. In addition, each school sets different hours: high school employees work from 6:30 a.m. to 2:30 p.m., and the K-8 school employees work from 7:45 a.m. to 3:45 p.m.

Regarding skills and duties, teachers at both schools are required to hold at least a bachelor's level degree and a teaching certification from the Commonwealth of Pennsylvania. Additionally, teachers are required to hold different specialized certifications depending on the grade level they teach. Pennsylvania currently stratifies its teaching certifications at three levels: grades one through four, grades five through eight, and grades nine through twelve. Current high school teachers testified that they are grandfathered in under a prior teaching certificate system that grouped secondary education as encompassing seventh through twelfth grades. Certified teachers at all levels are required to take continuing education credits to maintain their certifications. Within the last year, however, high school teachers have not had these types of professional development courses with the K-8 teachers. While teachers from both schools attended a joint staff meeting at the beginning of the 2016/2017 school year, held at the K-8 building they have had no other joint meetings since then. Teachers at the high school are tasked with student instruction, which makes up approximately eighty percent of their work day, along with preparation for upcoming lessons and grading student work, which encompasses approximately twenty percent of their day. High school teachers testified that they never teach grades K-8. Certain teachers taught ninth grade in the K-8 building in approximately 2010, when the ninth grade was included in the K-8 building. However, apart from that one example, high school teachers do not currently teach students in the K-8 school at any time.

The Employer has two nurses on staff: one is a registered nurse who serves only the high school and works 6:30 a.m. to 2:30 p.m.; the other is a licensed practical nurse who serves only the K-8 school and works 7:45 a.m. to 3:45 p.m. Both nurses are certified, are on the same pay scale and receive the same benefits; however, the Registered Nurse earns a higher salary.

Two counselors serve the high school. One is focused on college and career placement for students in 11th and 12th grade, and the other handles behavioral and emotional issues for all high school students. They work the high school schedule of 6:30 a.m. to 2:30 p.m., and receive compensation on the same pay scale and the same benefits. There are also two counselors in the K-8 school who work with students and families on behavioral and emotional issues. One serves students in grades kindergarten through five, and the other serves students in grades six through eight. The Employer employs one social worker who works with families on various issues such as housing, medical assistance and financial assistance for students in both schools. The social worker has the same health benefits as all other employees and is stationed at the high school. A head counselor, who oversees all four counselors and the social worker, is tasked with preparing

a monthly report on all counseling activities. All of the counselors and the social worker meet once per month to touch base and share knowledge and information. Counselors only provide services to students at the school to which they are assigned.

The Employer has one librarian who serves only the K-8 school. Previously, she worked at the high school, but upon recommendation of the high school principal she was transferred to work solely at the K-8 school this past year. She reports to the K-8 school principal, and is on the same salary scale as the professional employees.

The high school has one administrative assistant who works in the front office answering phones, administering the student information system, and updating information on the school website for both schools. Her primary responsibility is to assist the high school principal and the chief academic officer. The K-8 school has two administrative assistants who enter information into the computer system, answer phones, and perform other administrative work; in addition, one of them conducts the student lottery system for both schools, and enters information on all students into a school district system, and one handles bussing for the K-8 school and public mass transportation passes for the high school students. The administrative assistants for both schools have the same benefits and similar salaries. While the CEO speculated that if the administrative assistant for the high school was out for a month he might have one K-8 administrative assistant transfer to work at the high school, he did not recount an instance where this actually occurred. In an emergency situation that necessitates a structured dismissal, the employee handbook provides that office personnel from the K-8 school are tasked with monitoring student busses, calling parents of students who walk home to ensure students are safe, and monitoring student pick-up.

The high school non-teaching assistants, or aides, monitor hallways and bathrooms during classes, ensure students are orderly when changing classes, and oversee students at lunch. They are supervised by the principal. In the K-8 building, the classroom aides assist and work with the teacher. The K-8 school also has recess and lunch aides. Full-time aides earn \$30,000 per year; however, most aides at the K-8 school are part-time and are paid \$9-\$10 per hour. They are supervised by the vice principal of the K-8 school. They do not switch between schools.

The Employer has two maintenance employees who maintain both school buildings. While there is little record evidence regarding these employees, CEO Stadelberger testified that due to the age of the K-8 building, maintenance employees spend more time working there.

3. *Functional Integration*

Evidence of functional integration is also relevant to the issue whether a single-facility unit is appropriate. Functional integration refers to when employees at two or more facilities are closely integrated with one another functionally notwithstanding their physical separation. *Budget Rent A Car Systems*, 337 NLRB 884 (2002). This functional integration involves employees at the various facilities participating equally and fully at various stages in the employer's operation, with a substantial degree of coordination and contact, such that the employees constitute integral and indispensable parts of a single work process. *Ibid.*

The record here reveals little evidence of functional integration between facilities. Each school operates to provide education to a different and distinctive population of students. Teachers do not switch between the schools and spend virtually no time in the school to which they are not assigned, with only isolated instances in which they are required to be in the other school. For example, one high school teacher testified that he is a facility representative to the BOT, and gives a monthly verbal report at the BOT meetings at the K-8 school. In addition, once, years back, a teacher had an issue with his athletic stipend and had to communicate with the finance officer who is located in the K-8 building. Similarly, counselors and the school nurse provide services only to the students in their assigned school. There is some integration of the administrative assistant functions, such as a centrally maintained school website, but it is limited. Further, there is almost no evidence of contact between high school and K-8 school teachers aside from one annual meeting. Counselors have very limited contact as well, meeting just once per month to share knowledge. There is no evidence that nurses share duties. Each school operates independently, with the high school employees working together to provide educational services for high school students, and K-8 employees working together to provide educational services for K-8 students. Although the majority of students matriculate from the K-8 school to the high school, there is no evidence that employees from the high school discuss them with K-8 employees. While it is true that the schools share two maintenance employees, that alone is insufficient to show functional integration. Thus, the record fails to demonstrate that the employees employed in the schools facilities are part of a single work process, where work is performed at various stages on the same product at different facilities. More importantly, there is little record evidence that the functional integration results in contact between employees at the facilities, in significant interchange, or in transfers between the facilities. This lack of functional integration therefore, supports finding the single-facility unit appropriate.

4. *The Degree of Employee Interchange*

Interchange occurs where a portion of the work force of one facility is involved in the work of the other facility through temporary transfer or assignment of work. However, a significant portion of the work force must be involved and the work force must be actually supervised by the second location to meet the burden of proof of the party opposing the single-facility unit. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999). For example, the Board has found established and significant employee interchange where during a one-year period, there were approximately 400 to 425 temporary employee interchanges among three terminals in a workforce of 87, and the temporary employees were directly supervised by the terminal manager where the work was being performed. *Dayton Transport Corp.*, 270 NLRB 1114, 1115 (1984). On the other hand, where the amount of interchange is unclear both as to scope and frequency because it is unclear how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met, including where a party fails to support a claim of interchange with either documentation or specific testimony providing context. *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001); *Courier Dispatch Group*, 311 NLRB 728, 728, 731 (1993). Also important in considering interchange is whether the temporary employee transfers are voluntary or required, the number of permanent employee transfers, and whether the permanent employee transfers are voluntary. *New Britain Transportation Co.*, supra.

The record establishes minimal evidence of employee interchange between the schools. There is no evidence of temporary transfers between buildings, and only one instance of a voluntary permanent transfer. See *Red Lobster*, 300 NLRB 908, 911, (1990) (finding that the significance of employee interchange in the context of a potential multi-facility unit is diminished where it occurs as a matter of employee convenience, i.e., is voluntary). The high school teachers, counselors, nurses, aides, and office employees spend virtually all of their time at the high school building. Testimony established that high school employees do not substitute for those at the K-8 building, nor do K-8 employees substitute for high school employees. Thus, there is no evidence of temporary interchange between the schools. Evidence of only one permanent transfer was adduced: the nurse for the high school and the nurse for the K-8 school voluntarily switched schools. Two maintenance employees admittedly provide services for both buildings, but little evidence was presented concerning them.

5. *Distance between Locations*

The Board has found single-facility units appropriate where the facility operates on an employer's campus, but retains a high degree of local autonomy and lacks interchange. For example, in *Gordon Mills, Inc.*, 145 NLRB 771 (1963), the Board approved an independent unit of employees at the employer's 'Forest' plant, which was only 500 feet from its 'Velvetone' plant, despite the fact that the employer in that case maintained a centralized general and personnel office and there was common oversight by a plant manager and assistant plant manager. The Board reasoned that the plants had separate lower level supervision, without significant employee interchange, and that the common use of services or facilities was not enough to destroy the separate identities of the plants. *Id.* at 773. In *Avi Foodsystems, Inc.*, 328 NLRB 426 (1999), the Board found a single-facility unit of cafeteria workers appropriate, excluding employees who worked at a cafeteria about a mile away on the same campus, because of the substantial local autonomy exhibited by cafeteria managers and the lack of employee interchange.

There is no question that the schools are in close proximity to one another. They are located across the street from each other, separated by a public road, and about a two to three minute walk "door to door." Witness estimates of the distance ranged from 100 yards to just 75 feet. Nonetheless, the two facilities are clearly separate, as they are not connected to each other by tunnel or bridge. In view of my conclusions regarding the first three factors, I conclude that the proximity of the schools to each other does not outweigh the evidence that the schools are separate entities. See, e.g., *Gordon Mills*, *supra*.

6. *Bargaining History*

The absence of bargaining history is a neutral factor in the analysis of whether a single unit facility is appropriate. *Trane*, *supra* at 868, fn. 4. Thus, the fact that there is no bargaining history with this Employer neither supports nor negates the appropriateness of the unit sought by Petitioner.

C. Conclusion Under the Single-Facility Presumption

I have carefully considered the record evidence and weighed the various factors described above, and I find the single-facility presumption has not been rebutted. In doing so, I reject the Employer's assertion that its operations are so effectively merged into one comprehensive unit, or so functionally integrated, that the schools have no separate identity. In particular, I rely on the principals' significant autonomy over day-to-day matters and the nearly complete lack of employee interchange and contact to conclude that the Employer has not overcome the single-facility presumption.

D. Specialty Healthcare Analysis

I reach the same result applying the *Specialty Healthcare* standards. Under this framework, a determination first must be made as to whether the petitioned-for unit of employees is readily identifiable as a group, and then it must be determined whether employees in that grouping share a community of interest. When deciding whether a group of employees shares a community of interest, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002). If so, the unit will be found appropriate unless a party demonstrates that employees in a larger proposed unit share an overwhelming community of interest with the petitioned-for unit. *Specialty Healthcare*, supra, at 945-946. Particularly important in considering whether the unit sought is appropriate is the manner in which the employer has organized the facility and utilizes the skills of its employees. *Gustave Fisher, Inc.*, 256 NLRB 1069, 1069 fn. 5 (1981). With regard to organization of the facility, the Board has made clear that it will not approve of fractured units – that is, combinations of employees that are too narrow in scope or that have no rational basis. *Seaboard Marine*, 327 NLRB 556 (1999). However, *all* relevant factors must be weighed in determining community of interest.

To begin, I find that the unit sought by Petitioner is comprised of a readily identifiable group of employees. In *Specialty Healthcare*, the Board explained that a readily identifiable grouping can be based on a variety of factors such as job classifications, departments, functions, work locations, and skills. *Id.* at 945. All of the employees in the petitioned-for classifications of teachers, nurses, counselors, aides, maintenance workers and office staff employed at the Employer's high school maintain the educational environment and educate students in grades nine through twelve and work together in the high school building. Additionally, although both facilities are collectively overseen by the BOT and CEO, the high school building is separately supervised by Principal Schilling, who is onsite; similarly, the K-8 building is separately

supervised by Principal Woolf Cohen. Thus, based on work location and supervision, the petitioned-for employees are readily identifiable based on location.²³

Employees in the unit sought by Petitioner share a community of interest. Importantly, the petitioned-for unit is coextensive with a departmental line that the Employer has drawn. See *Macy's Inc.*, 361 NLRB No. 4, slip op. at 10 (2014); see also *Guide Dogs for the Blind*, 359 NLRB 1412, 1416 (2013) (finding a unit of all employees in the two classifications of the employer's training department who provide all of the training and care for active service dogs to be a readily identifiable group and share a community of interest); *Cf. Odwalla, Inc.*, 357 NLRB 1608, 1612 (2011) (finding a unit to be fractured where it does not follow any lines drawn by the employer, such as work location or supervision).. The petitioned-for unit is clearly an administrative grouping drawn by the Employer as it includes only employees who provide educational or supporting services to the high school students at the high school building. The non-petitioned for unit consists of employees who do not work in the high school. *Cf. Bergdorf Goodman*, 361 NLRB No. 11, slip op. at 3 (finding that different groups of women's shoe salespersons at a department store did not share a community of interest because the petitioned-for grouping did not share any operational lines set by the employer).

Furthermore, the petitioned-for employees have similar terms and conditions of employment, work the same hours, have the same benefits, are on the same pay scale based on their classifications, and have the same employee handbook. They work in a facility supervised and operated by the same CEO and the high school principal, and they work out of the same building and use the same parking lot daily. Employees in the professional unit are distinctly qualified and skilled, requiring at least a bachelor's level degree along with a specialized certification, such as nursing, teaching, or counseling. Professional employees are required to maintain licensure and certifications with continuing education credits. The record does not reflect evidence of the skills and qualifications necessary for the nonprofessional employees.

While each employee group has a separate function, and there is almost no evidence of job overlap between classifications, the employees at the high school are functionally integrated. They teach or provide support to a common group of students at the high school. Although the maintenance employees also work at the K-8 school, this does not diminish their connection with the petitioned-for unit to a degree requiring their removal from the appropriate unit. Rather, the workflow of teaching the high school students involves all of the employees sought by the Union in this unit.

Due to their common location, immediate supervision, working conditions, and their distinctive duties to instruct and support student education of grades nine through twelve at the

²³ I further note that in the event that the Professional employees (teachers, nurses, and counselors) chose not to be included in the same unit with non-professionals, they would make up a readily identifiable unit of professionals and constitute an appropriate unit. If they chose to vote against union representation while the non-professional group votes in favor, the non-professional unit would constitute a readily identifiable group and an appropriate unit within the meaning of the Board's holding in *Specialty Healthcare*.

high school, I find that they share a community of interest. These commonalities outweigh any differences outlined above.

I further find that the Employer did not meet its burden to prove that there is an overwhelming community of interest between the employees at the high school and the K-8 school, because the community of interest factors do not “overlap almost completely.” Employees at the K-8 school have very little contact and negligible interchange with employees at the high school. See *DPI Secuprint*, 362 NLRB No. 172, slip op. at 5 (2015) (finding even constant contact, absent interchange, does not establish an overwhelming community of interest). The K-8 employees serve an entirely different population of students in a geographically separate building. Although both groups have overall supervision by the CEO, the K-8 school is operated by a separate principal who has day-to-day oversight of its employees. Even though employees at the K-8 school have similar qualifications as those in the high school, there is some degree of difference regarding the specialization for specific grade levels. Moreover, there is minimal evidence that the K-8 employees have functional integration with the high school employees.

In sum, whether the Board’s traditional single-facility unit presumption or the *Specialty Healthcare* framework applies, I find that the Employer has not carried its burden of rebutting the appropriateness of a unit limited to all professional and non-professional employees who work at the Employer’s high school. Moreover, I find that the petitioned-for unit is not a ‘fractured unit’ of the type the Board disapproves. See *Odwalla*, supra. Rather, the unit is rationally drawn based on employee location, their shared function to provide educational services to a particular population of students, and their common supervision. Accordingly, I find the petitioned-for unit is appropriate, and direct an election.

IV. CONCLUSION

In determining that the single-facility unit sought by Petitioner is appropriate, I have carefully considered the record evidence and weighed the various factors that bear on the determination of whether a single-facility unit is appropriate. As described above, I find that the single-facility unit sought by Petitioner is appropriate under both the single-facility presumption and the *Specialty Healthcare* framework. Therefore, based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²⁴

²⁴ The Employer, New Foundations Charter School, Inc., a Pennsylvania nonprofit corporation, is engaged in the operation of an educational institution providing education to students, and during the most recent fiscal year, from July 1, 2016 through June 30, 2017, the Employer derived gross revenues in excess of \$1,000,000 from the operation of its facility, whose main

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Under Section 9(b)(1) of the Act, the Board is prohibited from including professional employees in a unit with employees who are not professional, unless a majority of the professional employees vote for inclusion in such a unit. To carry out the statutory requirement, the Board has adopted a special type of self-determination procedure in such an election known as a *Sonotone* election. Under this procedure, a separate voting group encompassing all professionals would elect whether to constitute a separate appropriate bargaining unit or be included in the larger unit with non-professionals. Accordingly, I find that all teachers, nurses, and counselors, who are professional employees, constitute a separate voting group which, depending on the outcome of the election, may constitute either a separate appropriate bargaining unit, or be included in the unit with the non-professional employees.

I therefore find that the following employees of the Employer *may* constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees, including: Teachers, Nurses, Counselors, Aides, Maintenance Workers, and Office Staff employed at the Employer's New Foundations Charter High School building, excluding all other employees, Chief Executive Officer, Chief Academic Officer, Principals, Vice Principals, Deans, Directors, all other managerial employees, guards, and supervisors as defined in the Act.

In order to ascertain the desires of the professional employees as to their inclusion in the unit with the non-professional employees, I shall direct separate elections in the following groups:

- (a) **(Professional Group)** 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; excluding all other employees, Aides, Maintenance Workers, Office Staff, Chief Executive Officer, Chief Academic Officer, Principals, Vice Principals, Deans, Directors, all other managerial employees, guards, and supervisors as defined in the Act.

mailing address is 8001 Torresdale Avenue, Philadelphia, PA 19136, and purchased and received at its facility goods and services valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

- (b) **(Non-professional Group)** All full-time and regular part-time Aides, Maintenance Workers, and Office Staff employed at the Employer's New Foundations Charter High School building; excluding all other employees, professional employees, Chief Executive Officer, Chief Academic Officer, Principals, Vice Principals, Deans, Directors, all other managerial employees, guards, and supervisors as defined in the Act.

The employees in the Professional Group (a) will be asked two questions on their ballots:

- (1) Do you wish to be included in a unit with non-professional employees for purposes of collective bargaining?
- (2) Do you wish to be represented for the purposes of collective bargaining by PHILADELPHIA ALLIANCE OF CHARTER SCHOOL EMPLOYEES, LOCAL 6056, AFT-PA, AFT, AFL-CIO

The choices for each question shall be "Yes" or "No."

If a majority of the professional employees in voting group (a) vote "yes" to the first question, indicating their wish to be included in the unit with non-professional employees (voting group b), they will be so included. Their votes on the second question will then be counted together with the votes of the non-professional employees to determine whether or not the employees in the combined professional and non-professional unit wish to be represented by PHILADELPHIA ALLIANCE OF CHARTER SCHOOL EMPLOYEES, LOCAL 6056, AFT-PA, AFT, AFL-CIO. If, on the other hand, a majority of the professional employees in voting group (a) vote against such inclusion, they will not be included with the non-professional employees. Their votes on the second question will then be separately counted to determine whether or not they wish to be represented by PHILADELPHIA ALLIANCE OF CHARTER SCHOOL EMPLOYEES, LOCAL 6056, AFT-PA, AFT, AFL-CIO.

The non-professional employees comprising voting group (b) will be polled to determine whether or not they wish to be represented by PHILADELPHIA ALLIANCE OF CHARTER SCHOOL EMPLOYEES, LOCAL 6056, AFT-PA, AFT, AFL-CIO.

The unit determination is based, in part, on the results of the election among the professional employees. However, the following findings in regard to the appropriate unit are now made:

If a majority of the professional employees vote for inclusion in the unit with the non-professional employees, I find that the following will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees, including: Teachers, Nurses, Counselors, Aides, Maintenance Workers, and Office Staff employed at the Employer's New Foundations Charter High School building, excluding all other employees, the Chief

Executive Officer, Chief Academic Officer, Principals, Vice Principals, Deans, Directors, all other managerial employees, guards, and supervisors as defined in the Act.

If a majority of the professional employees do not vote for inclusion in the unit with the non-professional employees, but do vote for representation apart from them, I find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

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; excluding all other employees, Aides, Maintenance Workers, Office Staff, Chief Executive Officer, Chief Academic Officer, Principals, Vice Principals, Deans, Directors, all other managerial employees, guards, and supervisors as defined in the Act.

All full-time and regular part-time Aides, Maintenance Workers, and Office Staff employed at the Employer's New Foundations Charter High School building; excluding all other employees, professional employees, Chief Executive Officer, Chief Academic Officer, Principals, Vice Principals, Deans, Directors, all other managerial employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above.²⁵ Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Philadelphia Alliance of Charter School Employees, Local 6056, AFT-PA, AFT, AFL-CIO.

A. Election Details

I have determined that a mail ballot election will be held because many of the employees in the proposed bargaining unit do not report to work at the school during the summer break when school is not in session, and they will not return to work until August 21, 2017.

²⁵ At the hearing, the Employer argued that the election should be conducted manually, rather than by mail ballot. Election arrangements, including the voting method, however, are not matters within the scope of a pre-election hearing. Pursuant to its longstanding practice, the Board has left such determinations to the discretion of the Regional Director. *2 Sisters Food Group, Inc.*, 357 NLRB No. 168, slip op. at 4-5 (2011); *Halliburton Services*, 265 NLRB 1154, 1155-1156 (1982); *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367-1368 (1954). See also NLRB Casehandling Manual (Part Two), Representation Proceedings Sections 11228, 11301.4. The election arrangements are set forth in this Decision under "Election Details."

In such situations, the Board has recognized that mail balloting is appropriate. See *San Diego Gas & Electric*, 325 NLRB 1143, 1145 fn. 7 (1998)(mail ballot election appropriate when employees are “scattered,” i.e., cannot be present at the same place at the same time). Moreover, where other factors favor mail balloting, the economic and efficient use of Board Agents is reasonably a concern. *Id.* at 1145, fn. 8; *Williamette Industries*, 322 NLRB 856 (1997).

The ballots will be mailed by 5:00 pm on **Thursday, July 13, 2017** to employees employed in the appropriate collective-bargaining unit. Ballots will be mailed to voters from the National Labor Relations Board, Region 4, 615 Chestnut Street, Suite 710, Philadelphia, PA 19106. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void. Voters must return their mail ballots to the Region 4 office by close of business on **Thursday, August 10, 2017**.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Thursday, July 20, 2017**, should communicate immediately with the National Labor Relations Board by either calling the Region 4 Office at 215-597-7636 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 4 Office at 615 Chestnut Street, Suite 710, Philadelphia, Pennsylvania on **Friday, August 11, 2017** at 2:00 pm. In order to be valid and counted, the returned ballots must be received in the Region 4 Office prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **June 30, 2017**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(1) of the Board’s Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names,

work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. **Because this is a *Sonotone* election, the list must be organized by professional status – the included professional employees should be listed on separate pages from the included non-professional employees.**

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, July 11, 2017, two business days after the date of issuance of this Decision and Direction of Election.** The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election.

For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: July 7, 2017



DENNIS P. WALSH
Regional Director
National Labor Relations Board
Region 04
615 Chestnut Street, Suite 710
Philadelphia, PA 19106-4413



United States of America
National Labor Relations Board
NOTICE OF ELECTION



INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

CHALLENGE OF VOTERS: An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

METHOD AND DATE OF ELECTION

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 5:00 pm on Thursday, July 13, 2017, ballots will be mailed to voters from the National Labor Relations Board, Region 04, 615 Chestnut St Ste 710, Philadelphia, PA 19106-4413. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Thursday, July 20, 2017, should communicate immediately with the National Labor Relations Board by either calling the Region 04 Office at (215)597-7601 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 04 Office on Friday, August 11, 2017 at 2:00 pm. In order to be valid and counted, the returned ballots must be received in the Region 04 Office prior to the counting of the ballots.



United States of America
National Labor Relations Board
NOTICE OF ELECTION



INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

VOTING UNITS

VOTING GROUP – UNIT 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; excluding all other employees, Aides, Maintenance Workers, Office Staff, Chief Executive Officer, Chief Academic Officer, Principals, Vice Principals, Deans, Directors, all other managerial employees, guards, and supervisors as defined in the Act.

Ballot for Voting Group - Unit A

 <p>UNITED STATES OF AMERICA National Labor Relations Board 04-RC-199928</p> 	
<p>OFFICIAL SECRET BALLOT For certain employees of NEW FOUNDATIONS CHARTER SCHOOL, INC.</p>	
<p>Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining?</p>	
<p>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</p>	
<p>YES</p> <input data-bbox="438 1092 576 1165" type="checkbox"/>	<p>NO</p> <input data-bbox="1088 1092 1226 1165" type="checkbox"/>
<p>Do you wish to be represented for purposes of collective bargaining by PHILADELPHIA ALLIANCE OF CHARTER SCHOOL EMPLOYEES, LOCAL 6056, AFT-PA, AFT, AFL-CIO?</p>	
<p>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</p>	
<p>YES</p> <input data-bbox="438 1396 576 1470" type="checkbox"/>	<p>NO</p> <input data-bbox="1088 1396 1226 1470" type="checkbox"/>
<p>DO NOT SIGN THIS BALLOT. See enclosed instructions.</p> <p>The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</p>	

If a majority of the professional employees voting in Unit A vote "Yes" to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included, and their votes on the second question will be counted together with the votes of the non-professional employees in Unit B to decide the question concerning representation for the overall unit consisting of the employees in Units A and B. If on the other hand, a majority of the professional employees voting in Unit A do not vote "Yes" to the first question, their ballots will be counted separately to decide the question concerning representation in a separate Unit A.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.



United States of America
National Labor Relations Board
NOTICE OF ELECTION



INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

VOTING GROUP – UNIT 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; excluding all other employees, professional employees, Chief Executive Officer, Chief Academic Officer, Principals, Vice Principals, Deans, Directors, all other managerial employees, guards, and supervisors as defined in the Act.

Ballot for Voting Group - Unit B

	<p>UNITED STATES OF AMERICA National Labor Relations Board 04-RC-199928</p>	
<p>OFFICIAL SECRET BALLOT For certain employees of NEW FOUNDATIONS CHARTER SCHOOL, INC.</p>		
<p>Do you wish to be represented for purposes of collective bargaining by PHILADELPHIA ALLIANCE OF CHARTER SCHOOL EMPLOYEES, LOCAL 6056, AFT-PA, AFT, AFL-CIO?</p>		
<p>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</p>		
<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>	
<p>DO NOT SIGN THIS BALLOT. See enclosed instructions.</p>		
<p>The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</p>		



United States of America
National Labor Relations Board
NOTICE OF ELECTION



INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or the mail ballots are dispatched in a mail ballot election
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (215)597-7601 or visit the NLRB website www.nlr.gov for assistance.

