



October 2016

INTRODUCTIONS:

Charter schools have greater autonomy than district schools and are therefore free from most state and local laws affecting district schools. However, charters must follow the laws outlined in the Charter Schools Act as well as federal laws and meet the same health and safety, civil rights and student assessment requirements applicable to district schools. While this may sound clear cut, it often isn't, and charter schools sometimes end up in court litigating these issues.

As Director of Legal Affairs at the Charter Center, I am constantly monitoring and tracking all cases, investigations, and legal matters related to charter schools in NYC. Sometimes resolutions of these matters have an impact on the whole sector. Feel free to **reach out to me** if you have questions about any of these matters!

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THE MATTER:

Hyde Leadership

The Issue: In the recent National Labor Relations Board (NLRB) decision of *Hyde Leadership Charter School*, 364 NLRB No. 88, the NLRB found that a charter school was an employer within the meaning of the National Labor Relations Act (NLRA) and not a political subdivision of New York state. In reaching its decision, the NLRB relied on the test set forth in Supreme Court case *NLRB v. National Gas Utility District of Hawkins County*, 402 U.S. 600 (1971) in determining that a charter school in New York was not created directly by any state government entity, special statute, legislation, or public official. Rather, the NLRB found that it was the charter school's founding board of trustees that prepared the comprehensive application to establish the school and once the school was approved by the Board of Regents, it was the founding board that promulgated the school's governing

and operating documents. Furthermore, under the second prong of the Hawkins County test, the NLRB determined that a charter school in New York is not administered by individuals who are responsible to public officials or to the general electorate. The NLRB reasoned that the school's board is run as a private corporation with members privately appointed and removed. The NLRB was unpersuaded by the argument that since the Board of Regents has the authority to remove a trustee of a charter school for malfeasance (an authority it has for trustees of all educational institutions in New York) this was equivalent to the trustees having direct personal responsibility to public officials. Because the NLRB found that a New York charter school is not a political subdivision of the state, its conduct with respect to labor matters is under the jurisdiction of the federal NLRA statute and not New York

WHAT DOES THIS MEAN FOR OTHER CHARTER SCHOOLS:

While the case was specific to Hyde, it is reasonable to assume that based on the NLRB's analysis of the Charter Schools Act other New York State charter schools similarly created (not conversion charter schools) that have not had unions formed or union issues litigated under PERB would also fall under NLRB jurisdiction. While there are several differences in procedures under state and federal law perhaps one of the biggest is the way in which a union is formed should consider that the NLRB would take jurisdiction

State's Labor Law (the Public Employees Fair Employment Act, more commonly known as the Taylor Law). Despite the finding that a charter school was an employer under the NLRA, the NLRB could have discretionarily declined to assert jurisdiction over the matter if it determined that "the effect of the dispute on commerce [was] not sufficiently substantial to warrant the exercise of its jurisdiction." 29 U.S.C. §164 (c)(1). Despite arguments from the Union that

the NLRB should decline jurisdiction because of the state's regulation and oversight of charter schools and language in the Charter Schools Act defining teachers as public school teachers, the NLRB maintained jurisdiction over the charter school stating that it routinely asserts jurisdiction over private entities that provide services, under contract, to governmental bodies.

WHAT'S NEXT:

Find out what this decision might mean for schools that have already been unionized under PERB rules or conversion charters.

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