

U.S. Fifth Circuit Holds that Louisiana Charter Schools are Subject to the NLRA

McGlinchey Education Law Alert

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Voices for International Business and Education, Inc., dba International High School of New Orleans v. National Labor Relations Board

On September 21, 2018, the U.S. Fifth Circuit Court of Appeals ruled that a Louisiana charter school is subject to the National Labor Relations Act (NLRA) like most other privately controlled employers.

At issue before the Court was whether Voices for International Business and Education, Inc. (Voices), a Louisiana nonprofit corporation formed by a group of citizens, which was operating International High School of New Orleans (IHS), was a political subdivision of the state to qualify for exemption under the NLRA. The NLRA does not define "political subdivision." The Court instead looked to the National Labor Relations Board's (NLRB) definition, which includes: when an entity is (1) "created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate." *N.L.R.B. v. Nat. Gas Util Dist. of Hawkins Cty.*, 402 U.S. 600, 604-05 (1971).

In finding the charter school is not a political subdivision, the Court placed great emphasis on the enabling legislation for and purpose of charter schools in Louisiana: by design, Louisiana charter schools lack political accountability of their Board of Directors and public control over policymaking. The Voices' board members are privately selected, and the public has no control over the selection of Voices' policymakers. Finding no ambiguity in the law, the Court found Voices is not a political subdivision.

The Court dismissed various arguments advanced by Voices regarding the public nature of charter schools. The Court recognized that the [Louisiana Supreme Court recently declared that Louisiana charter schools are "independent public schools"](#) and are treated as part of the public school system. *Iberville Par. Sch. Board v. La. State Bd. of Elementary & Secondary Educ.*, 2017-0257, 2018 WL 1319404, at 7 La. Mar. 13, 2018. Not finding the Louisiana Supreme Court's ruling controlling, the Court relied upon a Louisiana Attorney General Opinion, which reasoned that charter schools being public schools does not mean that charter schools are political subdivisions.

The Court similarly rejected Voices' arguments for exemption under the NLRA due to factors such as public funding, tax-exempt status, and that the charter is subject to open meetings laws, and that, in New Orleans, charter schools basically are the public school system. Rather, the Court focused on Voices' privately selected board whereby the public has no ultimate control over the policy making decisions. Accordingly, the Court found that Voices is subject to the NLRA.

This certainly is not the last you will hear about this issue, because the NLRB has taken conflicting views regarding the private nature of charter schools in other states across the country. For states such as Louisiana, this ruling prohibits charter schools from seeking protections from union organizing available to them under state labor laws. Charter schools should look for invigorated union organizing efforts in the workplace. For employers who do not feel that unionization is a good organizational fit, it is not too soon to begin efforts to provide their employees with the information they need to make a fully informed decision in a union vote.

For more information regarding this alert, please contact one of the authors or a member of the Labor & Employment and Education Law teams at McGlinchey Stafford.

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