

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

**LYCÉE FRANÇAIS DE LA NOUVELLE-
ORLÉANS**

Employer

and

Case 15-RC-333858

**UNITED TEACHERS OF NEW ORLEANS,
LOCAL 527, LFT, AFT, AFL-CIO**

Petitioner

DECISION ON JURISDICTION

Upon a Petition filed under Section 9(c) of the National Labor Relations Act (“Act”), a hearing was held before a Hearing Officer of the National Labor Relations Board (“Board”) in New Orleans, Louisiana, on January 29, 2024. On May 2, 2024, Region 15 issued its Decision & Direction of Election regarding the composition of the bargaining unit. On May 13, 2024, a majority of employees in the bargaining unit voted to be represented for the purposes of collective bargaining by United Teachers of New Orleans, Local 527, LFT, AFT, AFL-CIO (“Petitioner”). On May 23, 2024, Act 172 of the 2024 regular session of the Louisiana legislature went into effect amending and reenacting Louisiana Statute 17:3992 conferring on chartering authorities the authority to reconstitute the charter under certain circumstances. Based on this Act, on May 31, 2024, Lycée Français de la Nouvelle-Orléans (“Employer” or “LFNO”) submitted its Request for Review of the Decision and Direction of Election, arguing the Board lacked jurisdiction over LFNO following the passage of Act 172. On November 18, 2024, the Board issued an order remanding the matter to the Region to resolve the issue of jurisdiction. On November 21, 2024, the Region requested each party submit a Statement of Position addressing the issue of jurisdiction. As a result, the parties submitted their statements of position. Pursuant to the provisions of Section 3(b) of the Act, the Board has designated its authority in this proceeding to the undersigned.

I. Summary of Findings

The sole issue that must be resolved is whether the Employer is subject to the Board’s jurisdiction as an employer engaged in commerce within the meaning of the Act. The answer depends on whether the Employer is a political subdivision of the State of Louisiana under the second prong of the Supreme Court’s test set forth in *NLRB v. National Gas Utility District of Hawkins County*, 402 U.S. 600 (1971). As set forth below, I find the Employer is a political subdivision under the second prong of *Hawkins County*. Therefore, the Employer is not subject to the Board’s jurisdiction.

II. The Issue

The Employer asserts the Board does not have jurisdiction over it because Section 2(2) of the Act exempts from the Board's jurisdiction any "State or political subdivision thereof" and the Employer is a political subdivision of the State of Louisiana. The Petitioner claims the Employer is not a political subdivision of the State but, rather, is a private non-profit corporation subject to the Board's jurisdiction. As explained more fully below, I find the Employer is a political subdivision of the State, and therefore, the Board does not have jurisdiction.

III. Facts

In 2011, the Employer began operating LFNO pursuant to a contract with the Louisiana Board of Elementary and Secondary Education ("BESE"). LFNO is a French immersion charter school, instructing pre-kindergarten through the twelfth grade and operating three campuses across the City of New Orleans.

A. Louisiana Charter School Operations

In 1997, the Louisiana Legislature passed the Louisiana Public Charter School Law¹, allowing various groups and entities to form nonprofit corporations for the purpose of forming charter schools. La. R.S. §17:3971, *et seq.* In doing so, the state intended to "authorize school choice options for parents, teachers, and pupils through the creation of innovative kinds of independent public charter schools." La. R.S. §17:3972(A). The law defines a charter school as an "independent public school that provides a program of elementary or secondary education, or both, established pursuant to and in accordance with the provisions of this Chapter to provide a learning environment that will improve pupil achievement." La. R.S. §17:3973(2)(a).

A type 2 charter school is a "new school or a preexisting public school converted and operated as the result of and pursuant to a charter between the nonprofit corporation created to operate the school and the State Board of Elementary and Secondary Education. La. R.S. §17:3973(2)(b)(ii). BESE is the chartering authority for Type 2 charter schools. *See* La. R.S. §17:3983(2)(a). BESE is an eleven-member state body established by the 1974 Louisiana Constitution. *See* La. Const. Art. VIII, §3. Eight of its members are elected by the public and three members are appointed by the governor to represent the state at large. *Id.* at (B)(1).

Charter Bulletin 126, which implements the Charter School Law, provides that the Board of Directors of each charter is responsible for "implementing the public school charter program proposed in its charter application, complying with and carrying out the provisions of the charter school contract and complying with all applicable federal and state laws and policies governing the charter school. La. Admin. Code tit. 28, pt. CXXXIX, § 101.

B. LFNO

On July 31, 2009, Articles of Incorporation were filed with the Louisiana Secretary of State creating LFNO as a Louisiana nonprofit corporation. The Articles of Incorporation set forth the original Board of Directors, which consisted of three individuals. On June 3, 2011, LFNO entered into a charter agreement with BESE to operate a Type 2 Charter School. According to the charter

¹ Formerly known as Louisiana Charter School Demonstration Programs law. *See* La. R.S. §17:3971 (Acts 1995, No. 192, §1, eff. June 14, 1995; Acts 1997, No. 477, §1, eff. June 30, 1997).

agreement, LFNO was organized to “provide educational services according to the educational standards established by law, the Charter Contract and the Charter Application/Proposal; measure student progress toward stated goals; and participate in student assessments required by law, regulation, and BESE policy.”

LFNO’s charter was renewed in 2016 and again in 2023. On August 20, 2022, the LFNO’s board of directors adopted amended bylaws, which are the current bylaws governing LFNO’s operations. LFNO must meet all the requirements of Louisiana law, including La. R.S. §17:3991, *et seq.*, the terms of the charter agreement it entered with BESE, and the regulations promulgated by BESE for the operation of charter schools, namely BESE Bulletin 126.

LFNO is governed by a Board of Directors, which is responsible for selecting and removing its members, setting its policies, and controlling its affairs. The seven-to-thirteen-member Board is composed of Directors and Parent Directors, who serve staggered three-year terms. A Director is nominated by the Governance Committee and elected by a majority vote of Directors. Directors may be removed by the Louisiana Board of Ethics for violations of the Louisiana Code of Ethics. *See* La. R.S. § 42: 1153B. LFNO employs faculty and staff, and LFNO has “exclusive authority over all employment decisions at the charter schools.” §17:3997(A)(1)(a)–(b).

C. Act 172

LFNO is a self-perpetuating body. The bylaws state that Board members are elected and may be removed by the Board members themselves at any time, for cause. Board members may also be removed by the Louisiana Board of Ethics for violations of the Louisiana Code of Ethics. *See* La. R.S. § 42: 1153(B).

On May 23, 2024, Act 172 of the 2024 Louisiana Legislative Session went into effect when the Governor of Louisiana signed it into law. This act confers the power on the chartering authority to reconstitute the governing body of the charter holder during the charter renewal process under certain circumstances. Act 172 of the 2024 Louisiana Legislative Session amends La. R.S. §17:3992. It now reads:

D. (1) As an alternative to revocation as provided for in Subsection C of this Section, and in accordance with rules promulgated by the state board, the chartering authority may reconstitute the governing body of the charter holder if the chartering authority determines that the governing body of the charter holder has done one of the following:

- (a) Committed a material and uncorrected violation of applicable law relative to the finances of the school or the health, safety, or welfare of the students enrolled at the school.
- (b) Failed to satisfy accountability provisions prescribed by the charter or the chartering authority.
- (c) Failed to meet generally accepted accounting standards of fiscal management.

- (d) Committed material violations of the bylaws of the organization or nonprofit laws of the state.
 - (e) Is imminently insolvent as determined by the chartering authority.
- (2) The action that the chartering authority takes pursuant to this Subsection shall be based on the best interest of the public charter school's students, the severity of the violation, any previous violation that the school has committed, and the accreditation status of the school and shall be implemented after a public hearing.

BESE promulgated rules implementing Act 172, which went into effect on January 20, 2025. *See* La. Admin. Code tit. 28, pt. CXXXIX, § 2105.

IV. Applicable Precedent and Decision

Section 2(2) of the Act excludes “any State or political subdivision thereof” from the definition of employer. U.S.C. § 152(2). The Supreme Court has defined a “state or political subdivision” as an entity: (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. *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600, 604-605 (1971). To be excluded from the Act’s jurisdiction, an entity need only meet one of the two prongs of the *Hawkins County* test. In the instant case, LFNO was not directly created by the state, therefore, it does not meet the first prong of the *Hawkins County* test. Accordingly, only the second prong of the *Hawkins County* test is at issue.

A. Jurisdiction over Charter Schools

On May 2, 2024, Region 15 issued its first Decision & Direction of Election regarding the composition of the bargaining unit and asserted jurisdiction over the Employer because the Fifth Circuit had previously affirmed the Board’s jurisdiction over charter schools in Louisiana. *See Voices for International Business and Education, Inc.*, 905 F.3d 770 (5th Cir. 2018). In *Voices*, the Court found the school was not a political subdivision because it was not administered by individuals who are responsible to public officials or the general electorate. The “self-perpetuating” Board could remove, nominate, and select additional or replacement Board members. *Id.* at 774. The Court differentiated the authority of the Louisiana Ethics Adjudicatory Board to terminate Board members who violate state ethics laws from the public officials’ removal and replacement authority to terminate corrupt natural gas commissioners in *Hawkins County*. *Id.* (emphasis included). The Fifth Circuit ended its decision emphasizing the Louisiana Legislature’s choice to insulate charter schools from the political process:

“That lack of political influence over Louisiana charters was a choice the legislature made in its enabling legislation. Private control was not a bug of that law; it was a reason for it. Because Louisiana chose to insulate its charters from the political process, *Voices* like most other privately controlled employers is subject to the National Labor Relations Act.” *Id.* at 778.

With Act 172, the Louisiana legislature intentionally chose to hold Louisiana charter schools politically accountable by conferring the charter authorizer with the power to remove and replace charter board members. Reconstitution is an available process if the governing body: (1) committed a material and uncorrected violation of applicable law relative to the finances of the school or the health, safety, or welfare of the students enrolled at the school; (2) failed to satisfy accountability provisions prescribed by the charter or the chartering authority; (3) failed to meet

generally accepted accounting standards of fiscal management; (4) committed material violations of the bylaws of the organization or nonprofit laws of the state; or (5) is imminently insolvent as determined by the chartering authority. La. R.S. §17:3992 (D). Act 172 gives BESE, a state composed body, the right to remove and replace LFNO board members during the charter renewal process.

Despite the Region’s prior assertion of jurisdiction over the Employer, the passage of Act 172 has called into question whether the Employer constitutes a political subdivision exempt from the Board’s jurisdiction. Significantly, the statutory language of Act 172 closely mirrors Tex. Educ. Code §12.115², a statute which the Board found satisfied the second prong of *Hawkins County* and exempted the Texas charter school at issue from the Board’s jurisdiction. *LTTS Charter Sch., Inc. d/b/a Universal Acad. & Kimberly Free*, 366 NLRB No. 38 (Mar. 15, 2018).

In *LTTS Charter Sch.*, the Board highlights the full authority of the Texas Education Agency (“TEA”) to reconstitute the charter board for a “host of reasons, including charter violations, fiscal malfeasance, student health and welfare concerns, violations of applicable laws or rules, breaches of performance standards and insolvency.” *Id.* The Board also pointed out that TEA’s authority to reconstitute the Board is subject to a “fairly deferential” standard of review, the arbitrary and capricious or clearly erroneous standard. *Id.* In sum, the Board determined that TEA’s “broad, and practically unreviewable, authority to reconstitute the Board” rendered it a political subdivision under the second prong of *Hawkins County*. *Id.*

B. Arguments of the Parties

The Employer argues that because Act 172 is nearly identical to the Texas statute at issue in *LTSS Charter Sch.*, the Board should follow its precedent and find that the Employer is exempt

² Texas, Tex. Educ. Code §12.115 grants the Texas Commissioner of Education the authority to reconstitute the governing body of an open-enrollment charter school under certain conditions. It reads:

- (a) Except as provided by Subsection (c), the commissioner shall revoke the charter of an open-enrollment charter school or reconstitute the governing body of the charter holder if the commissioner determines that the charter holder:
 - (1) committed a material violation of the charter, including by a failure to:
 - (A) satisfy accountability provisions prescribed by the charter; or
 - (B) comply with the duty to discharge or refuse to hire certain employees or applicants for employment, as provided by Section 12.1151 (Failure to Discharge or Refuse to Hire Certain Employees or Applicants);
 - (2) failed to satisfy generally accepted accounting standards of fiscal management;
 - (3) failed to protect the health, safety, or welfare of the students enrolled at the school;
 - (4) failed to comply with this subchapter or another applicable law or rule;
 - (5) failed to satisfy the performance framework standards adopted under Section 12.1181 (Performance Frameworks; Annual Evaluations); or
 - (6) is imminently insolvent as determined by the commissioner in accordance with commissioner rule.
- (b) The action the commissioner takes under Subsection (a) shall be based on the best interest of the open-enrollment charter school’s students, the severity of the violation, any previous violation the school has committed, and the accreditation status of the school.

The decision to reconstitute the governing body is subject to a fairly deferential standard of review, (the “arbitrary and capricious or clearly erroneous” standard) by the State Office of Administrative Hearings. *See e.g.*, Tex. Educ. Code §12.116; *LTTS Charter Sch., Inc. d/b/a Universal Acad. & Kimberly Free*, 366 NLRB No. 38 (Mar. 15, 2018).

from its jurisdiction. Specifically, both statutes confer full authority to remove and replace charter board members in similar circumstances. This authority is “broad and practically unreviewable,” satisfying the second prong of *Hawkins County* as interpreted by *LTTS Charter Sch.*

Petitioner argues that reliance on *LTTS Charter Sch.* to decline jurisdiction is misplaced because BESE’s reconstitution power under Act 172 is more limited than under Tex. Educ. Code §12.115, and the Board should instead rely on *Hyde Leadership Charter School—Brooklyn*, 364 NLRB No. 88 (2016) and *Pennsylvania Virtual Charter School*, 364 NLRB No. 87 (2016) to interpret *Hawkins County*. In those cases, the Board found the Employer’s governing bodies were not responsible to public officials. Petitioner points to one key difference in the statutes, arguing that the reconstitution power for failure to “comply with this subchapter or another applicable law or rule” in Texas is far greater than the reconstitution power for “material violations of the bylaws of the organization or nonprofit laws of the state.”³ Tex. Educ. Code §12.115(a)(4); La. R.S. §17:3992(D)(1)(d). Petitioner also argues the Board should maintain jurisdiction because BESE’s reconstitution power is only theoretical and the actual operations of LFNO have not changed since Act 172. Petitioner further contends that Act 172 cannot be examined until implementing regulations have been formulated, as required by the Act.

C. Findings

I find that the Board’s decision in *LTTS Charter Sch.* is compelling and have determined that the Employer is a political subdivision exempt from the Board’s jurisdiction. Act 172 is indeed nearly identical to Tex. Educ. Code §12.115. Both statutes confer “broad, and practically unreviewable” authority to reconstitute the Board. This broad authority includes the power to remove and replace charter board members in circumstances of charter violations, fiscal malfeasance, student health and welfare concerns, violations of certain laws or rules, and insolvency. The statutory differences do not alter the broad authority provided to reconstitute the Board. Petitioner asserts that the Louisiana statute is more discretionary in that the Texas statute *mandates* the chartering authority revoke the charter or reconstitute the governing body under applicable circumstances, while the Louisiana statute *allows* the chartering authority the choice to either revoke the charter in some circumstances or reconstitute in others.⁴ However, the permissive authority conferred to BESE offers even greater discretion to determine the scope of potential solutions, including reconstitution. Moreover, unlike Texas, BESE’s reconstitution decision is implemented only after a public hearing,⁵ reinforcing the notion that the charter is administered by individuals who are responsible to public officials *or to the general electorate*.

Act 172 also confers the type of “practically unreviewable” authority to reconstitute the Board contemplated in *LTTS Charter Sch.* In this regard, unlike the deferential standard of review used for revocation decisions in Texas, there is no opportunity for appeal in Louisiana, rendering

³ Similarly, under Act 172, revocation can occur under violation of “any provision of law applicable to its charter school, its officers, or employees” and reconstitution can occur upon “a material violation of the bylaws of the organization or nonprofit laws of the state.” La. R.S. §17:3992(c)(4),

⁴ Tex. Educ. Code §12.115(A) reads: “The Commissioner shall revoke the charter of an open-enrollment charter school or reconstitute the governing body of the charter holder if the commissioner determines that the charter holder...”. La. R.S. §17:3992(C) and (D)(1) reads: “A school charter may be revoked...” or “as an alternative to revocation as provided in Subsection C of this section...the chartering authority may reconstitute the governing body of the charter holder if the chartering authority determines...”

⁵ La. R.S. §17:3992(D)(2).

the reconstitution decision final. Ultimately, Act 172 confers on BESE broad and unreviewable authority to reconstitute the Board, satisfying the controlling inquiry from *LTTS Charter Sch.*

I reject the Petitioner’s argument that reliance on *LTTS Charter Sch.* is inapposite because the Tex. Educ. Code §12.115 allows for reconstitution in more circumstances. Ultimately, both statutes confer “broad authority” to remove and replace Board members. Petitioner’s reliance on *Hyde* and *Pennsylvania Virtual* to argue for a finding of jurisdiction is also misplaced. BESE’s authority to remove Board members is quite unlike the Board of Regents in *Hyde*, who had “limited authority to remove a trustee for malfeasance.” Act 172 confers the authority to BESE to *reconstitute* the Board, not just remove a member, and under more varied circumstances. *Pennsylvania Virtual* is also inapplicable. While the charter board in *Pennsylvania Virtual* is a self-perpetuating entity like BESE, there is no statute allowing for reconstitution. Rather, the Board’s analysis of the statute at issue in *LTTS Charter* is the relevant inquiry to undertake.

Petitioner also argues that the Board should exercise jurisdiction over the Employer because the reconstitution authority of Act 172 is only theoretical. However, the Board has rejected the argument that the reconstitution power is only theoretical until exercised, stating that the “infrequent exercise of a valid power does not make it illusory. On the contrary, many state powers are rarely utilized (e.g., capital punishment, impeachment, eminent domain), but remain vital.” *LTTS Charter Sch.*, 366 NLRB No. 38 at Footnote 16. I have considered the additional evidence submitted by the parties regarding BESE’s decision on February 21, 2025, to reconstitute the board of a Louisiana charter school operated by Education Explosion, Inc. and the ongoing litigation in federal court challenging such action.⁶ Since the Board has explicitly rejected the argument that the chartering authority’s reconstitution power must be exercised to be valid, the efficacy of BESE’s current action is immaterial.

As to Petitioner’s argument regarding the failure to have implementing regulations for Act 172, I note that BESE adopted the implementing regulations at its meeting on August 21, 2024, and the regulations became final on January 20, 2025. La. Admin. Code tit. 28, pt. CXXXIX, § 2105. Finally, I must reject Petitioner’s argument that the Board should retain jurisdiction to promote labor relations stability and avoid calling into question the collective bargaining relationships at other New Orleans charters schools. It is well settled that parties can raise jurisdictional issues before the NLRB at any point as jurisdictional prerequisites cannot be waived or forfeited.

In short, Act 172 confers on BESE broad and practically unreviewable authority to reconstitute the Board, satisfying the controlling inquiry from *LTTS Charter Sch.* Consequently, LFNO is administered by individuals who are responsible to public officials, satisfying the second prong of *Hawkins County* and transforming it into a political subdivision exempt from the Board’s jurisdiction under 2(2) of the Act.

V. Conclusion

⁶ The additional evidence submitted in the Motion to Amend the Record and the parties’ Responses to Order to Show Cause are officially considered part of the record from the hearing.

I find that the Employer is a political subdivision within the meaning of Section 2(2) of the Act because it is administered by individuals who are responsible to public officials or the general electorate. Therefore, the Employer is a political subdivision exempt from the Board's jurisdiction.

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 10 business 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 must be E-Filed through the Agency's website and 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, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. 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: April 1, 2025

/s/ *M. Kathleen McKinney* by par

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