UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

ST. HOPE PUBLIC SCHOOLS

Employer

and **20-RD-378706**

AN INDIVIDUAL

Petitioner

and

SACRAMENTO CITY TEACHERS ASSOCIATION, CTA/NEA

Union

DECISION AND DIRECTION OF ELECTION

St. HOPE Public Schools ("Employer") is a nonprofit corporation that operates Sacramento Charter High School and St. HOPE Public School 7. By its petition, an individual ("Petitioner") seeks to decertify the current bargaining representative, Sacramento City Teachers Association, CTA/NEA ("Union"), which currently represents a unit of "[a]ll regular certificated employees and classroom teachers within the meaning of Education Code section 47605(l), including long-term substitutes, and [excluding] all management, supervisory, day to day substitutes, classified and confidential employees within the meaning of EERA section 3540.1." The Employer takes the position that the National Labor Relations Board ("the Board") lacks jurisdiction over the Employer because, as an asserted political subdivision, the Employer is not a Section 2(2) employer under the National Labor Relations Act ("the Act").

A hearing officer of the Board held a hearing in this matter via Zoom Government from January 26, 2026, to January 28, 2026. As explained below, based on the record and relevant Board law, I find that the Board has jurisdiction over this Section 2(2) employer and there is no bar to processing the instant petition. I shall direct an election to be held among the employees in the existing petitioned-for unit, as set forth below.

1. ISSUES AND PARTIES' POSITIONS

The sole issue presented in this case is whether the Employer is a Section 2(2) employer, as defined in the National Labor Relations Act ("the Act") and thus subject to the Board's jurisdiction, or whether it is a political subdivision exempt from the Board's jurisdiction. The parties stipulated to the appropriateness of the unit. (Bd. Exh. 2).[1]

The Union, Employer, and the Public Employee Relations Board ("PERB"[2]) take the position that PERB has sole jurisdiction over the unit because the Employer is a public employer and its employees are public employees. In support of this position, PERB and these two parties point to the history of collective bargaining between the Employer and Union and their resort to PERB to determine the Union's status as the exclusive collective-bargaining representative of the existing unit herein and to resolve their unfair labor practice disputes. In this regard, PERB certified the Union on December 6, 2018, and the parties have pending unfair labor practice charges and hearings before PERB. However, there is not a decertification petition on file with PERB involving these parties.

PERB further argues that the Employer is a public employer because, as part of its charter, it is required to abide by certain State regulations and meet certain performance and fiscal requirements, such as California's CSA, the California Public Records Act, and the Ralph M. Brown Act, California's open public meetings law. Finally, the Union, Employer, and PERB argue that the State has appointment and removal authority over the Employer's Board of Directors, which if true, would satisfy the second *Hawkins* prong.

Conversely, the Petitioner contends that the Employer is not a public employer because it is not a political subdivision under either prong of the *Hawkins*[3] test. Accordingly, it argues that the Employer is subject to the Board's jurisdiction.

Having reviewed the record, stipulations, and arguments presented by the parties, as well as the applicable legal precedent, I find that the Employer is an employer within the meaning of Section 2(2) of the Act and is not exempt under the test set forth in *Hawkins County*, the case that controls here. Accordingly, I am directing an election among the employees in the agreed upon appropriate unit.

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[1] Citations to the transcript will be designated as "Tr. __." Joint Exhibits will be designated as "Joint Exh. __." Board Exhibits will be designated as "Bd. Exh. __."

[2] PERB sought to intervene in the proceeding, and I permitted it to participate as a limited intervenor for the sole purpose of submitting its position and argument that the Employer is not a Section 2(2) Employer, as defined by the Act.

[3] *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971).

II. FACTS

The record evidence shows that the Employer was created around 2002[4] by Kevin Johnson, a private individual, and his foundation, St. HOPE.[5] The record suggests that St. HOPE Public School 7 submitted its application in 2002 and that its charter was authorized by Sacramento City Unified School District ("SCUSD" or "the District") the same year. The school began operating in 2003. The Employer has since had its charter renewed several times, most recently subject to the terms of a Memorandum of Understanding ("MOU") with SCUSD, ending June 30, 2030.

The Employer's governance is through its Board of Directors. Under Article V of the Employer's bylaws, effective as of October 1, 2024, "the [Employer's] activities and affairs shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board [of directors]." (Joint Exh. A). The bylaws provide for a Board consisting of at least seven, and no more than fifteen, members known as "Directors." *Id.* The bylaws also provide for appointment and removal of Board members. *Id.* Section 4, "Appointment to Office" states the following:

> A "Nominating Committee" of four (4) shall be designated by Kevin M. Johnson and shall consist of Kevin M. Johnson and three Directors (the "Designating Parties"). Designating Parties are individuals with the power to nominate Directors. The Designating Parties shall exercise the powers described in this section by a signed and dated document specifically referring to such powers and a copy of such document shall be delivered to the Chairman of the Board, the Secretary of this Corporation or any director. The Nominating Committee shall have the exclusive power to submit the qualified nominees for appointment to the Board of Directors and shall be deemed a Designating Party. Except for any SCUSD representative and pupil member, no director may be appointed to the Board of Directors unless nominated by the Nominating Committee.

Sections 9 and 10 concern the mechanisms surrounding removal of Directors for cause or without cause, and state the following:

> The Board of Directors shall have the power and authority to remove a Director and declare his or her office vacant if he or she has (i) been declared of unsound mind by a final order of court; (ii) been convicted of a felony; (iii) been found by a final order or

[4] At hearing, Interim Superintendent Elisha Ferguson Parsons testified that the Employer was founded by Kevin Johnson and his St. HOPE Foundation around 2004. However, the documentary evidence establishes otherwise. See e.g., Joint Exh. C.

[5] Johnson served as mayor of Sacramento from 2008-2016, several years after he formed the Employer.

judgment of any court to have breached any duty under California Non-Profit Public Benefit Corporation Law, Chapter 2, Article 3; (iv) if the Director fails to attend three (3) consecutive regular meetings of the Board of Directors that have been duly noticed in accordance with article VI, below; or (iv) If the Director is no longer qualified to serve as a Director as provided in Section 3.

Any Director, except for the representative appointed by SCUSD, may be removed with or without cause, by the vote of the majority of the members of the entire Board of Directors at a special meeting called for that purpose, or at a regular meeting, provided that notice of that meeting and such removal are given in compliance with the provisions of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code) as said chapter may be modified by subsequent legislation ("Brown Act"). The representative designated by the SCUSD may be removed without cause by SCUSD or with the written consent of SCUSD. Any vacancy caused by the removal of a Director shall be filled as provided in Section 8.

II. DISCUSSION

Section 2(2) of the Act provides that the term "employer" shall not include any state or political subdivision thereof. The term "political subdivision" is not defined in the Act, and the legislative history of the Act is silent as to whether Congress considered its meaning. However, the Board has long applied a two-prong test to determine whether an entity should be considered a political subdivision. As held by the Supreme Court, an entity qualifies as a political subdivision only if it is either: "(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 the general electorate." *NLRB v. Nat. Gas. Util. Dist. of Hawkins County*, 402 U.S. 600, 604–05 (1971). The NLRB has consistently applied the *Hawkins County* test in determining whether charter schools fall within the NLRA's jurisdiction. *See Chicago Mathematics & Science Academy Charter School, Inc. (CMSA)*, 359 NLRB 455 (2012); *Pennsylvania Virtual Charter School*, 364 NLRB 1118 (2016); *Hyde Leadership Charter School-Brooklyn,* 364 NLRB 1137 (2016).

The record evidence shows that the State legislature intended charter schools to be public schools and that the Employer and Union have acted consistent with this intent since 2018 in forming their collective-bargaining relationship and resolving their unfair labor practice disputes. However, the legislative intent of the State is not binding on a federal agency such as the Board. See *Hinds County Human Resource Agency*, 331 NLRB 1404, 1404 (2000), citing *Hawkins County,* 402 U.S. at 602 (state's characterization of entity is "worthy of careful consideration" but

is "not controlling in ascertaining whether an entity is a political subdivision."). Rather, the *Hawkins County* test controls.

A. Employer Was Created by a Private Individual

The record establishes that Kevin Johnson and his St. HOPE foundation created the Employer no later than 2002. The school subsequently received its charter from SCUSD in 2003, five years before he was elected mayor. (Tr. at 41, 62). In both *Chicago Mathematics* and *Pennsylvania Virtual Charter School*, supra, the Board found it significant that private individuals created the schools before charters were issued by the state. Just as the Board found in *Hyde*, where a board of regents incorporated the charter school after issuing the school's charter, the order of operations is not dispositive, and incorporating the school does not amount to "directly creating" it under *Hawkins County*. *Id*. at 1141, 1142.

Given that the Employer was founded by a private individual and his foundation, it is unnecessary to examine whether the Employer is an administrative arm or department of the government. See *Regional Medical Center at Memphis*, 343 NLRB at 358, in which the Board found that the employer was not created by the State and thus could only be exempt under the second prong of the *Hawkins County* test (i.e., "only if officials who are responsible to public officials or to the general electorate administer it"); *Enrichment Services Program*, 325 NLRB at 819 (same). Although Interim Superintendent Elisha Ferguson Parsons testified that the Employer required a charter from a public entity in order to operate as a public charter school in California, that requirement does not establish that the Employer was directly created by the state. (Tr. at 35-36). The first prong of the *Hawkins County* test has not been met.

B. The Board of Directors Is Not Subject to Appointment and Removal by a Public Official

Under the second *Hawkins County* prong, an entity is a political subdivision if it is "administered by individuals who are responsible to public officials or to the general electorate." *Hawkins County*, supra at 608. In *Charter School Administration Services*, 353 NLRB 394 (2008), the Board established that the dispositive inquiry is whether the individuals who administer the entity are appointed by and subject to removal by public officials. See also *Pennsylvania Virtual Charter School,* supra at 1118. Going one step further, the Board in *Chicago Mathematics* found that, where none of the employer's governing board members were appointed by or subject to removal by a public official, "[n]o further inquiry is required." Supra, at 469.

Under Article V of the Employer's bylaws, "the [Employer's] activities and affairs shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board

[of Directors]." (Joint. Exh. A). From this, it can be understood that the Board of Directors is comprised of the individuals who administer the Employer, making the relevant inquiry whether the Board of Directors are appointed by and subject to removal by public officials.

The Union contends that a recent shift in the Board's makeup is instructive on the second *Hawkins* prong. In the summer of 2024, SCUSD audited the Employer with the assistance of a third-party auditing firm. (Tr. at 64-67). It found that then Board President Cassandra Jennings held a position both on the Board and as a leader of the Employer's fiscal back-office provider, amounting to a clear conflict of interest. *Id.* Following receipt of the auditor's reports, the District issued a notice to correct, including a call for the Employer to resolve this conflict of interest. *Id.* In July 2025, Jennings resigned. (Joint Exh. D). Later that month, the Employer's bylaws were updated to preclude any officer, director, or employee of a vendor or intended vendor from serving on the Board of Directors. *Id.* On July 1, 2025, SCUSD approved the Employer's renewal petition, subject to the terms of an MOU. *Id.* The MOU was ratified and approved on December 18, 2025. *Id.* Entering into the MOU was a condition for the District's authorization of the charter renewal.

As stated above, the Employer's bylaws dictate how Directors are appointed and removed. The Union argues that Section 31(b) of the MOU illustrates the District's power to remove and appoint Directors in the event that it determines the Employer is out of compliance with the MOU. Section 31(b) reads:

> The Charter School understands and acknowledges that violations of any laws could subject its Charter to revocation pursuant to Education Code section 47607(f). The Charter School further understands that the District shall have the authority to compel compliance with this MOU. Should the District determine that the Charter School has failed to comply with a material condition of this MOU, or is violating or has violated applicable law(s) or regulation(s), its Charter, SELPA policies, or any provision of this MOU, the District may impose corrective actions or other reasonable measures it deems appropriate to enforce this MOU and/or bring about proper conduct. Joint Exh. D.

The Union interprets the broad language of "corrective actions" and "compel compliance" to capture appointment and removal, if ever necessary. It points to the resignation of Board President Jennings as a direct consequence of the District's corrective action and argues that, had Jennings not resigned, the District would have intervened, either by replacing Jennings itself or by depriving the Employer of its charter(s). However, the District's ability to revoke charters does not convert the Employer into a public entity. As the Board has previously held, "[t]he power to revoke a charter is analogous to a state's decision to cease subcontracting work to a private employer that fails to satisfy the state's standards. It does not convert the contractor into a state entity." *The Pennsylvania Virtual Charter School*, supra at 1124,

Ultimately, the method of selection of the Employer's governing board is dictated by its bylaws, not by SCUSD. The bylaws provide that only sitting members may appoint, remove, and fill vacancies on the board of directors. (Joint Exh. A). The exception is the one director seat to which SCUSD is entitled. That single seat is subject to removal without cause by SCUSD or with the written consent of SCUSD. *Id.* A vacancy in that seat can also be filled by SCUSD, although the record does not establish that SCUSD currently has a seat on the board or has ever appointed a director to sit on the board. *Id.* (Tr. at 90). With regard to ex-Board President Cassandra Jennings' resignation, current Board President Veal-Hunter testified that she was appointed to her job solely through her communications with Jennings, and that Jennings was not removed from her position. *Id.* at 80-83. This testimony is consistent with the parties' positions that Jennings elected to resign from her board position, rather than her office position, to eliminate the conflict of interest.

Even assuming that SCUSD appointed one of 7-15 directors of the board or possessed authority to remove a board member in limited circumstances as part of its broad authority to compel compliance with the parties' MOU, such authority over a super minority of the board is insufficient to establish "direct personal accountability" to public officials within the meaning of *Hawkins County*. In *Regional Medical Center at Memphis*, 343 NLRB 346, 359 (2004), the Board found that "[f]or an entity to be deemed 'administered by' individuals responsible to public officials or to the general electorate, those individuals must constitute a majority of the board." See also *Enrichment Services Program, Inc.*, 325 NLRB 818 (1998), in which the Board held that a private employer was not an exempt political subdivision where less than a majority of the members of its board of directors were public officials or individuals responsible to the general electorate.

Based on the entire record and relevant Board law, I shall direct an election among the employees in the agreed upon existing appropriate unit.

IV. CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find 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.[6]

3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.[7]

4. The parties stipulated, and I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> ***Included:*** All regular certificated employees and classroom teachers within the meaning of Education Code section 47605(l), including long-term substitutes
>
> ***Excluded:*** All management, supervisory, day-to-day substitutes, classified and confidential employees within the meaning of EERA section 3540.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Sacramento City Teachers Association, CTA/NEA.

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[6] The parties did not stipulate that the Employer engaged in commerce within the meaning of the National Labor Relations Act and is subject to the jurisdiction of the National Labor Relations Board. However, the evidence establishes that it is engaged in commerce as contemplated by the Act and that the Board has jurisdiction. The Employer is a California corporation with a places of business located at 5201 Strawberry Ln, Sacramento, California and 2315 34th St, Sacramento, California, and is engaged in the business of providing education services. During the past 12 months, a representative period, the Employer derived gross revenues in excess of $1,000,000 from the operation of its education facilities and purchased and received between its Sacramento facilities goods to the value in excess of $5,000 directly from points located outside the State of California.

[7] The parties stipulated that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

A. Election Details

The election will be held on March 11, 2026, in the Employer's Sacramento High School Library located at 2315 34th Street in Sacramento, California. Polling will occur from 2:30pm to 5:00pm, and the ballots will be counted immediately after the closing of the polls.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately prior to the issuance of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

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(l) 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.

To be timely filed and served, the list must be *received* by the regional director and the parties by **February 27, 2026.** The list must be accompanied by a certificate of service showing service on all parties. **The Region will not 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.nlrb.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.nlrb.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 forthcoming Notice of Election 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.nlrb.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 at San Francisco, California, on the 25th day of February 2026.

/s/ Daniel J. Owens

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