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PERB Finds In Favor of Charter School Management Organization: The appropriate public school employer for organizing teachers is a wall to wall unit of all teachers of the CMO.

In a very important recent decision regarding labor relations within charter schools in California, a regional director of the Public Employment Relations Board (“PERB”) ruled in December 2006 that the appropriate unit of teachers for purposes of an election to organize under the Educational Employment Relations Act (“EERA”) includes all the teachers employed by the charter management organization (“CMO”) across all of its school sites.

In the matter of Education For Change (“EFC”) and East Oakland Community Charter Teachers Association (“Association”) (PERB case number SF-RR-881-E; December 12, 2006), PERB considered for the first time whether the teachers at one school site operated by a CMO could organize into a single unit and demand negotiations for a collective bargaining agreement with the employer (EFC is operated as a nonprofit public benefit corporation). In this case, EFC (the CMO) operated three charter school sites in the Oakland Unified School District (“District”). The teachers at one of the start-up school sites formed their own association (East Oakland Community Charter School Teachers Association) and petitioned PERB for recognition as the exclusive representative (i.e., union) representing the teachers at that school site. (The Association was able to demonstrate majority support of the teachers at one school site, but was unable to garner enough interest at two of the other school sites to demonstrate majority support across all of EFC’s teachers.) In response, EFC challenged the appropriateness of a single school site unit and claimed the appropriate unit should include all teachers at all school sites operated by EFC. In addition, EFC argued that the appropriate union should include all of the permanent substitute teachers, prep teachers, reading coaches and the lead reading coach.

In a detailed and lengthy analysis, PERB found that there is only one “public school employer” and that the individual charter school sites are part of that single public school employer (based up on the functional integration of the operations of the school sites, the centralized control of employment and labor issues, common management, and common ownership and financial control). In finding a single employer, PERB cited to the following facts: 1) EFC had control over all employment decisions; 2) EFC was the locus of authority for final decision making (the governing body of each school was the EFC Board of Directors); all teachers; 3) EFC employees worked with a common salary schedule; 4) EFC employees had the same employment agreement; 5) EFC employees received the same health and welfare benefits; 6) EFC teachers delivered the same curriculum; 7) EFC teachers are evaluated on the same rubrics; 8) employees ultimately reported to the same EFC management; and 9) such employees were covered by a single employment handbook. While there was some decentralized decision making, and EFC did manage to keep a separate set of books for each individual school site, this was not sufficient to convince PERB that each individual school site should be treated as a separate employer under the EERA.

As a result of the decision, the Association was unable to demonstrate majority support across all of EFC’s schools and the petition for recognition failed.

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This case and its findings are important to you and your charter school if your organization is comprised of a single nonprofit public benefit corporation operating more than one charter school in more than one location (regardless of whether you call yourself a CMO or education management organization (“EMO”)). PERB included a footnote in its decision indicating that the conclusions of its opinion are limited to the facts of the instant case.

If you have any questions about how your organization could be constructed to achieve this same result, please do not hesitate to contact Paul Minney at (pminney@smymlaw.com) or James Young at (jyoung@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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