

# New Orleans Charter School Operator Ordered to Bargain with Union

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The Fifth Circuit Court of Appeals recently held that a New Orleans charter school was not a “political subdivision” exempt from the National Labor Relations Act (NLRA). The NLRA does not apply to States and their political subdivisions. In this case, the charter school challenged the National Labor Relations Board’s (NLRB) finding that its operator, Voices for International Business and Education, Inc., was not a political subdivision of Louisiana and thus was not exempt from the NLRA. The Fifth Circuit denied the school’s petition for review and in so doing affirmed the NLRB’s decision that the school’s operator had committed an unfair labor practice when it refused to recognize or negotiate with the labor union that was elected by the employees of the school and ordered the school to recognize and bargain with the union. [Voices for International Business and Education, Inc. v. NLRB, No. 17-60364 \(September 21, 2018\).](#)

## Background

Voices for International Business and Education, Inc., a Louisiana nonprofit corporation formed by a group of citizens in 2009, operates the International High School of New Orleans (IHS). Since 2009, Voices has operated IHS under a charter with the Louisiana Board of Elementary and Secondary Education.

The United Teachers of New Orleans filed a petition with the NLRB seeking to represent Voices’ employees. Voices objected on the ground that the NLRB lacked jurisdiction because Voices was not a private employer subject to the NLRA but a political subdivision of the State of Louisiana. Voices’ position was rejected by a hearing officer and the NLRB. Specifically, the NLRB determined that Voices was not a political subdivision of the State of Louisiana as it “was neither created directly by the state of Louisiana so as to constitute a department or administrative arm of the government nor administered by individuals who are responsible to public officials or the general electorate.” The NLRB also rejected Voices’ request to exercise its discretion and decline jurisdiction.

IHS employees then voted in favor of union representation. Voices again refused to recognize or negotiate with the union, claiming that it was exempt from the NLRA as a political subdivision of Louisiana. The union filed an unfair labor practice charge against Voices for refusing to bargain as

required by the NLRA. The NLRB found Voices committed an unfair labor practice and ordered it to recognize and bargain with the union. Based on the NLRB's decision, Voices filed a petition for review with the Fifth Circuit challenging the NLRB's finding that Voices was not a political subdivision of the State of Louisiana.

## The Fifth Circuit's Decision and Analysis

The Fifth Circuit ruled that a Louisiana charter school like IHS is subject to the NLRA just as most other private employers in the United States. After noting the NLRA does not define the term "political subdivision," the court relied on the NLRB's definition, which provides that a political subdivision is an entity that 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 to the general electorate."

In finding that a charter school like IHS was not a political subdivision of the State of Louisiana, the court analyzed Louisiana's legislation establishing charter schools in the state and the legislature's purpose for doing so. The court noted that because, by design, the members of Voices' board of directors are privately selected and the public has no control over the selection of Voices' policymakers, Voices lacked the requisite direct political oversight as well as the requisite public control over policymaking to constitute a political subdivision pursuant to the NLRB's definition. Therefore, Voices, as most private employers, is subject to the NLRA.

Notably, in reaching its decision, the Fifth Circuit rejected Voices' argument regarding the public nature of charter schools, which relied on the Louisiana Supreme Court's recent ruling that while Louisiana charter schools are "independent public schools," they are treated as, and are a part of, the public school system. Instead, noting that the Louisiana Supreme Court's ruling was not dispositive of the legal issue before it, the court relied upon a Louisiana attorney general opinion that explains that the mere fact that charter schools are public schools does not mean they are political subdivisions of the State of Louisiana. It likewise rejected arguments that Voices was exempt under the NLRA based on its receipt of public funding, tax-exempt status, and subjection to open meeting laws.

## Key Takeaways

While the Fifth Circuit's ruling effectively bars Louisiana and other similar states' charter schools from arguing they are legally exempt from having to deal with unions or union organizing pursuant to the federal labor laws, this is likely not the end of this issue. This is especially true because the NLRB has taken opposite and conflicting views regarding the exempt status of other charter school systems throughout the country. Therefore, charter school operators that do not feel unionization would be a good fit for their respective schools may want to begin (or resume) educating their workforces about the pros and cons of unionizing.

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