



NLRA's Jurisdiction Over Charter Schools Remains Undecided

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As we pass the one-year mark since the NLRB unexpectedly agreed to reconsider whether it should [decline jurisdiction over charter schools](#) on a class-wide basis, the agency's jurisdiction over charter schools remains intact for now. However, the outcome of a case currently under consideration by the Republican-controlled NLRB could change that.

Jurisdiction over charter schools was previously decided under the Obama-era NLRB in 2016. In [Hyde Leadership Charter School-Brooklyn](#) and [Pennsylvania Virtual Charter School](#), the NLRB found that charter schools are in fact employers subject to the NLRA, so long as they do not constitute "political subdivisions" of a state. These decisions likened charter schools to government contractors which are routinely found to be subject to the NLRA. Additionally, the NLRB at the time expressly rejected a claim that it should decline jurisdiction on the grounds that charter schools as a class do not have a sufficiently substantial effect on interstate commerce. That question is now under consideration by the Republican-controlled NLRB in [KIPP Academy Charter School, Case No. 02-RD-191760](#).

If the NLRB determines that labor disputes at charter schools are "sufficiently substantial" to effect interstate commerce, then the NLRA will continue to apply to charter schools, unless the charter school is a "political subdivision" of a state. Conversely, if the NLRB determines that such disputes are not "sufficiently substantial" to effect interstate commerce, then charter schools will not be subject to the NLRA and instead will be subject to whatever protections are afforded under state law, if any.

The NLRB's decision on this question will impact privately owned charter schools in many states. For example, while Indiana law explicitly grants collective bargaining rights for public school employees who are certificated,

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full-time employees (Ind. Code § 20-29 *et seq*), the law is less clear for private charter school employees. This is important because if such employees are not covered by Indiana's bargaining laws, then whatever the NLRB decides on the "sufficiently substantial" effect on interstate commerce question could have far-reaching implications for private charter schools in Indiana and other states with restrictive bargaining laws. A denial of charter school jurisdiction would effectively leave certain charter school employees without collective bargaining rights.

Stay tuned as we continue to update you on this important legal question.