

DISCUSSION

In *Chicago Mathematics & Science Academy Charter School, Inc., and Chicago Alliance Of Charter Teachers & Staff, IFT, AFT, AFL-CIO*, 194 L.R.R.M. 1321; 359 NLRB No. 41 (2012), the National Labor Relations Board held that "where the appointment and removal of a majority of an entity's governing board members is controlled by private individuals—as opposed to public officials—the entity will be subject to the Board's jurisdiction." *Id.* at 8. The National Board further stated that "[o]ur sole focus is on the composition of CMSA's board of directors and to whom they are accountable," *id.* at 9, and that "[c]ontrary to the Acting Regional Director, we do not view the fact that CMSA's governing board is subject solely to private appointment and removal as merely **one** factor of many in a second-prong analysis. Rather, it is properly regarded as the critical and determinative factor in a second-prong analysis." *Id.* at 9 (emphasis original).¹ The members of New Media's Board of Directors are neither elected by the public nor directly accountable to a public official. Consequently, New Media is a private employer under the National Board's jurisdiction and not a political subdivision under this Board's jurisdiction.

Moreover, based on the *CMSA* case, the National Board has directly asserted jurisdiction over the employes at the New Media Technology Charter School. Section 301(1) of PERA expressly provides that the term "public employer" "shall not include employers covered or presently subject to coverage under . . . the 'National Labor Relations Act.'" 43 P.S. § 1101.301(1). Section 301(2) of PERA further provides that the term "public employe" or "employe" "means any individual employed by a public employer" Because the National Board has asserted jurisdiction over New Media, it is not a public employer, within the meaning of PERA, and employes of New Media do not, therefore, meet the statutory definition of public employe. Accordingly, the Board does not have jurisdiction over the petition for representation, which is hereby dismissed, or the unfair practice claims, which are hereby dismissed. Additionally, this order surpasses and revokes any inconsistent conclusions contained in the proposed decision and order previously issued on December 21, 2011, for Case Nos. PERA-C-11-185-E and PERA-C-11-192-E.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The New Media Technology Charter School is **not** a public employer within the meaning of Section 301(1) of PERA.
2. The employes of New Media Technology Charter School are **not** public employes within the meaning of Section 301(2) of PERA.
3. The Board does **not** have jurisdiction over New Media or its employes.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the unfair practice charges and the representation petition are dismissed and the complaints are rescinded.

¹ In *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600, 91 S.Ct. 1746 (1971), the United States Supreme Court relied on a two-pronged test for determining whether an entity is a political subdivision within the meaning of the National Labor Relations Act and thereby excused from the National Board's jurisdiction. Under that test, an entity may be considered to be a political subdivision if it is either (1) created directly by the state so as to constitute a department or administrative arm of government; or (2) administered by individuals who are responsible to public officials or to the general electorate. The second prong was employed to determine whether CMSA was a political subdivision.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code §95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this seventeenth day of June, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner