

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

AGORA EMPLOYEES EDUCATION :  
ASSOCIATION PSEA/NEA :  
 :  
V. : Case No. PERA-C-12-146-E  
 :  
AGORA CYBER CHARTER SCHOOL :

**PROPOSED DECISION AND ORDER**

On May 21, 2012, the Agora Employees Education Association, PSEA/NEA (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Agora Cyber Charter School (Agora) violated Section 1201(a) (1) and (2) of the Public Employe Relations Act (PERA) by interfering with the election process.

On May 22, 2012, the Secretary of the Board issued a complaint and notice of hearing designating a hearing date of June 1, 2012, in Harrisburg. After several granted continuance requests, two days of hearing were held on June 19, 2012, and August 16, 2012. At those hearings, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties filed post-hearing briefs.

**FINDINGS OF FACT**

1. The Agora Cyber Charter School is operated by K12, Inc. K12 Inc. is a for-profit education company that is publicly traded on the New York Stock Exchange.
2. The members of the Board of Trustees of Agora are not publicly elected. They are not appointed or removed by public officials.
3. The National Labor Relations Board has taken jurisdiction over a Charter School in Pennsylvania with a privately appointed board.

**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 37. 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 40, 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 41 (emphasis original). The members of Agora's board of trustees are neither elected by the public nor directly accountable to a public official. Consequently, Agora 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 asserted jurisdiction over employes at the New Media Technology Charter School, in Philadelphia, which has a privately appointed board of directors. 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 private charter schools in the Commonwealth of Pennsylvania, Agora is not a public employer, within the meaning of PERA, and employes of Agora do not,

therefore, meet the statutory definition of public employe. Accordingly, the Board does not have jurisdiction over the instant unfair practice claim.

**CONCLUSIONS**

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

1. The Agora Cyber Charter School is **not** a public employer within the meaning of Section 301(1) of PERA.
2. The employes of Agora Cyber Charter School are **not** public employes within the meaning of Section 301(2) of PERA.
3. The Board does **not** have jurisdiction over Agora 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 charge is dismissed and the complaint is rescinded.

**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 thirteenth day of June, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

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Jack E. Marino, Hearing Examiner