Proskauer

NLRB Decides to Assert Jurisdiction Over Charter Schools On A Case By Case Basis

Labor Relations Update Blog on **March 27, 2020**

The NLRB continues to operate during the novel coronavirus crisis. Regional offices are largely working remotely as is the rest of the country. The Board itself continues to issue decisions, albeit at a slower pace than usual. On February 4, 2019, the NLRB invited interested parties to file briefs addressing whether the agency should decline to assert jurisdiction "as a class" to charter schools, which are private educational institutions granted a "charter" to operate pursuant to state public education law. Generally speaking, unions do not like the NLRB to assert jurisdiction over charter schools because under federal law employees are entitled to a secret ballot election on the question of union representation; many state public education laws only require a "card check" to establish recognition.

On Wednesday, March 25, 2020 the NLRB affirmed a decision by the Regional Director which held that a New York charter school fell under Board jurisdiction. *KIPP Academy Charter School*, 368 NLRB No. 48 (2020). The union appealed the decision, arguing that under Section 14(c)(1) of the NLRA, charter schools should be exempt from Board jurisdiction as a class, because they are statutorily-exempt public entities. This appeal led to the NLRB's request for briefs. Board law in this area contains cases where the Board asserts jurisdiction and cases where the Board declines to assert jurisdiction.

In a short decision, the NLRB held that, after consideration of all arguments made by parties it would not decline jurisdiction over charter schools as a class. Beyond its ruling, the NLRB provided no explanation for its decision.

So, for the time being, the Board will continue to decide whether to assert jurisdiction over charter schools using its analysis of Section 14 of the Act on a case by case basis.

View Original

Related Professionals

- **Joshua S. Fox**
  Partner
- **Mark Theodore**
  Partner