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OPINION | COMMENTARY

The Drive to Unionize Charter Schools

Trump's nominees can help reverse a harmful new labor ruling.



PHOTO: GETTY IMAGES

By **PETER SCHAUMBER**

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Are charter schools public or private? On the one hand, they're designed to be an integral part of state public-education systems. On the other, charter schools are run by private boards, and their operations are exempt from many, though not all, of the regulations that govern traditional public schools.

How you answer seems to depend on whether you support charter schools. Advocates argue they are unequivocally public because they are funded by the state, do not charge tuition, and are open to all. Critics—teachers unions most prominently—accuse charters of privatizing public education.

Of late the National Labor Relations Board has sided with the critics. On Feb. 1 the board voted 2-1—with the Democratic majority outvoting the new Republican acting chairman—that teachers and aides at New Orleans's Lusher Charter School are eligible to unionize under the National Labor Relations Act.

The NLRA, enacted in 1935, applies to some private employers but not all: In the 1950s, the labor board declined to assert jurisdiction over the racetrack industry, on the ground that tracks were “essentially local in character”—that is, “permitted to operate by special state dispensation and . . . subject to detailed state regulations.” That’s also true of charter schools, which, unlike racetracks, perform an essentially local function.

The board’s assertion of authority over charter schools won’t necessarily apply in every case. Jurisdiction will depend on the facts, and there is immense variation in how different charter schools are created, operated and regulated. If the board’s decisions remain good law, some charter schools will be subject to the NLRA, while some will not. Who regulates labor relations at which school—the state or the federal government—will be uncertain until the board decides. That defeats the purpose of the NLRA—to establish nationwide standards.

Lurking behind this entire debate is the widely held belief that the success of some charter schools—including those in New Orleans, where test scores and graduation rates have improved significantly—is a result of their being nonunion. If you harbor any doubt, watch Davis Guggenheim’s award-winning documentary, “Waiting for Superman.” The film shows how early tenure and protections for underperforming teachers—both demanded by teachers unions—impede student achievement and drive parents to enroll children in charter schools.

The NLRB has two vacancies, which President Trump will fill. Once the board is at full strength, it should promptly disavow jurisdiction over all charter schools—leaving their labor issues to the states. Either way, the small size of most charter operations militates against union organizing. Negotiating a contract with a single charter school can take as much effort as doing the same with an entire traditional school district.

And charter school teachers, freed from the usual bureaucracy, are less apt to vote for a union that helped create the educational decline their school was created to remedy. Just ask the teachers at Lusher Charter School: Although a handful of aides, together with a few professionals, voted to unionize last May, the teachers voted against, 77-54.

Mr. Schaumber, a former chairman of the NLRB, was appointed by President George W. Bush and served from 2002-10.

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