

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

Chicago, Illinois

CIVITAS SCHOOLS, LLC,

Employer

and

CASE 13-RM-1764

**CHICAGO ALLIANCE OF CHARTER
TEACHERS AND STAFF, ILLINOIS
FEDERATION OF TEACHERS (AFT),
AFL-CIO,**

Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on before a hearing officer of the National Labor Relations Board to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.¹

I. Issues and Parties' Positions

The Petitioner, Civitas Schools, LLC (herein Civitas or the Employer), seeks an election conducted by the Board among a unit of its employees. The Union, while agreeing that the petitioned-for unit is an appropriate unit for the purposes of collective bargaining, contends that the Board does not have jurisdiction over Civitas to process the instant petition. The Union's contention is based on its assertion that Civitas and Chicago Charter Schools Foundation ("CCSF"), doing business as Chicago International Charter School ("CICS"), are a single employer (herein collectively referred to as CCSF/CICS), and as such are political subdivisions of the State of Illinois exempt from the jurisdiction of the Board under Section 2(2) of the Act. Civitas asserts it is the sole employer of the petitioned-for unit of employees, that is is not a

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of 9(c)(1) and Sections 2(6) and (7) of the Act.

single employer with CCSF, and that neither it or CCSF/CICS are political subdivisions of the State of Illinois.

Based on the parties positions regarding whether the Board can assert jurisdiction over Civitas and the record in this matter, the issues or potential issues are:

1. Whether Civitas is on its own a political subdivision of the State of Illinois?
2. If Civitas on its own is not a political subdivision of the State of Illinois, is it a single employer with CCSF/CICS?
3. If Civitas on its own is not a political subdivision of the State of Illinois but is a single employer with CCSF/CICS, is Civitas, as part of a single employer with CCSF/CICS, a political subdivision of the State of Illinois?

II. Decision

Based on the entire record of this proceeding and for the reasons set forth below, I find that Civitas and CCSF/CICS do not constitute a single employer and that Civitas, the sole employer of the petitioned-for employees, is not a political subdivision of the State of Illinois. Accordingly, I do not have to reach the issue of whether CCSF/CICS is a political subdivision of the State of Illinois. In sum, I find that Civitas is an employer subject to the jurisdiction of the Board within the meaning of Section 2(2) of the Act, and that it is appropriate to process the instant petition.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

All full-time and part-time teachers, counselors and social workers employed by the Employer at the Wrightwood Campus located at 8130 South California Avenue, Chicago, Illinois 60652, Northtown Academy currently located at 3900 West Peterson Avenue, Chicago, Illinois 60659, and the Ralph Ellison Campus currently located at 1817 West 80th Street, Chicago, Illinois 60620, and excluding all confidential employees, managerial employees, and guards and supervisors as defined by the National Labor Relations Act.

III. Statement of Facts

A. Background on Civitas and CICS

Chicago Charter School Foundation, doing business as Chicago International Charter School, is a privately run 501(c)(3) non-profit organization with a mission to provide a high quality college preparatory education for children through the operation of charter schools. As provided in the Illinois Charter Schools Law, CCSF/CICS has a board of directors that governs the organization and sets the mission of the organization. Pursuant to a charter granted under the

Illinois Charter Schools Law, CCSF/CICS operates as one charter school with 12 separate campuses throughout Chicago, Illinois. Each campus is designated with the CICS moniker in addition to the individual campus name. CCSF/CICS has plans to open a charter school in Rockford, Illinois in 2010.

A charter school is a privately-run public school of choice, although it is not subjected to the same rules and regulations as a typical public run school in a public school system, such as Chicago Public Schools (“CPS”). Charter school laws vary from state to state, but most, if not all, states have an authorizer for charter schools. In Illinois, the local public school system where the charter school is located is the authorizer. Charter schools in Chicago are authorized by the Office of New Schools within CPS. Rockford Public School District 205 is the authorizer for the school that CICS plans to open in Rockford next year.

Charter contracts in Illinois are five-year contracts and at the end of that period, schools, like CICS, go through an extensive renewal process during which the authorizer reviews the original charter, financial information, governance information, and student performance data. A charter may be revoked if a school cannot meet its contractual charter obligations. CCSF/CICS’s charter was most recently renewed in 2007 and expires in 2012.

B. Civitas’s Operations

Civitas is an educational management organization (“EMO”) with an office currently located at 1033 West Van Buren in Chicago, Illinois. EMOs are private management companies that manage charter schools. Civitas was organized in Illinois as a limited liability company consisting of a single member and manager: CCSF. As the Executive Director of CCSF, Dr. Elizabeth Purvis acts on behalf of CCSF with respect to Civitas. Simon Hess, the current CEO of Civitas, is responsible for the management and strategic development of the organization as well as its internal operations, external relations, and making sure that Civitas meets the objectives regarding student academic achievement, financial efficiency, and growth. Hess, like previous Civitas CEO Theresa Nelson, was hired by Purvis and reports directly to her, but is paid through Civitas, not CCSF/CICS. The CEO position is the only position in which Purvis is involved with respect to hiring for Civitas. While Purvis is designated as manager of Civitas, she has no day-to-day involvement with management of Civitas.

CCSF/CICS contracts with EMOs, such as Civitas, to operate and manage its campuses including hiring and supervising the school’s teaching staff. Civitas has a contract with CCSF/CICS to operate and manage three CICS campuses: Northtown Academy, Wrightwood, and Ralph Ellison.³ CCSF/CICS also has contracts with three other EMOs—Edison Schools, Victory Schools, and American Quality Schools—to operate and manage its other campuses in the Chicago area. CCSF/CICS contracts with EMOs are negotiated individually by Purvis and the EMOs. Although possible, there has never been a situation where CCSF/CICS did not renew a contract with an EMO because the parties could not agree on the terms of the contract. However, CCSF/CICS may not renew a contract over performance problems. CCSF/CICS decided not to renew its contract with Civitas for the CICS Basil campus after Civitas failed to

³ Civitas previously managed a fourth campus, CICS Basil Campus.

improve and remedy inadequate student progress in reading. Victory Schools now contracts with CCSF/CICS to operate and manage CICS Basil Campus. All four of CICS contracts with the EMOs are similar and provide for the same terms and expectations of each EMO with respect to the use of funds and the implementation of a rigorous and relevant curriculum. The contracts also set very specific student performance targets for each campus. In sum, the individual contracts between CCSF/CICS and the EMOs are used to manage CCSF/CICS's relationship with each EMO to insure that CCSF/CICS meets the requirements of its charter agreement with the state.

CCSF/CICS has contracted with Civitas for the last four to five years and such contracts come up for renegotiation before the end of the fiscal year, which is June 30. In the relationship between CCSF/CICS and the EMOs, CCSF takes care of everything from the campus walls out. All personnel who work within the campus walls are the responsibility of the EMO that runs the particular campus. CICS campuses are in buildings that CCSF/CICS either owns or have long-term leases on, and the EMOs pay rent to CCSF/CICS on a per pupil basis as part of their contracts.

The contract that CCSF/CICS has with the EMOs, including Civitas, provides that they will hire personnel necessary for the operation of the CICS campuses they manage, such as the campus directors or principals, teachers, and other employees. As previously stated, CEO Simon Hess is the head of Civitas and is ultimately responsible for the operations staff of the three CICS campuses it manages pursuant to its contract with CCSF/CICS. Civitas has a chief academic officer, Stacy Beardsley, to whom Campus Directors Cheryl Kalkirtz, Eboni Wilson, and David Lewis report. Curriculum Directors Dawn Sandoval and Loretta O'Brien also report to Beardsley. Chief Financial Officer David Savage oversees an accounting and finance staff, and Civitas Director of Technology Chris Taubanese reports directly to Savage. Director of Human Resources Doris Badillo, Director of External Relations Erika Callahan, and the Director of Family and Community Engagement report directly to Hess.

Civitas interviews, hires, disciplines, and terminates all of its employees through its own human resources personnel without prior approval by CCSF/CICS, including Purvis or its Board of Directors.⁴ Civitas must be sure that potential hires have the right credentials and meet certain requirements and background checks. Civitas may consult CCSF/CICS Associate Director Erin Lanoue regarding legal requirements applicable for certain positions. All personnel working at campuses managed by Civitas are considered employees of Civitas according to the contract between Civitas and CCSF/CICS. The contract further provides that "Civitas shall compensate all such employees according to Civitas's compensation policies, which may include performance-based incentives...[in addition to] salaries, fringe benefits, employment taxes and other employment related costs and expenses." With the exception of the Chicago Teachers' Pension Fund, which only certified teachers are eligible to participate in, all benefits that employees who work on Civitas campuses receive are provided by Civitas and not CCSF/CICS or any other entity, including the government. CCSF/CICS does not participate in negotiations of or approve contracts between Civitas (or any other EMOs) and the teachers they hire to teach and work in its schools.

⁴ Purvis testified that there have been occasions when she was asked for her personal opinion with regard to personnel issues, but that her opinions were simply that and not binding on Civitas.

During the last fiscal year, Civitas' revenues totaled approximately \$15 to \$17 million, about 90 percent of which came from its contractual relationship with CCSF/CICS. The remainder of Civitas's revenues come from its passive investments in a money market account as well as campus or cafeteria funds. Civitas is not currently engaged in any efforts to raise money through private donations. Of the 14 million dollars in expenditures that Civitas had last fiscal year, approximately 60 to 65 percent of that was spent on salaries for its employees, while the remaining amount was applied to student costs, administrative fees, facility, and professional services. A statement of annual deposits and filings, prepared by Civitas' payroll processor ADP for each campus Civitas manages, is submitted to the IRS every year. Civitas creates its own budget, which its CFO David Savage is responsible for coordinating and managing. Although Civitas submits a copy of its budget to CCSF/CICS as part of its contractual agreement, CCSF/CICS is not involved in the creation of Civitas's budget. Civitas does not submit its budget directly to Chicago Public Schools or any government entity, including the Illinois State Board of Education.

C. CCSF/CICS's Operations

CCSF/CICS employs about 17 or 18 full-time employees and four part-time employees at its office located at 228 South Wabash Street, Suite 500, in Chicago, Illinois. As the executive director of CCSF/CICS, Elizabeth Purvis is responsible for the strategic planning and thinking of CCSF/CICS, in addition to the oversight of its budget and its relationship with the Board of Directors. As head of CCSF/CICS, Purvis reports to the Board of Directors and is subject to removal by the Board. CCSF/CICS has a "Leadership Team" that reports directly to Purvis: Associate Director Erin Kerry Lanoue, Chief Academic Officer Andrea Brown-Thurston, Chief Data Analyst Christine Poindexter, Director of Special Projects Megan Schmidt, Development Director Michael Barnhill, and Chief Operating Officer Tom McGrath.

CCSF was incorporated on January 30, 1997, for the purpose of owning and operating "a charter school or to make distributions to charitable, educational and scientific organizations qualified under Section 501(c)(3) of the Internal Revenue Code." The Board of Directors is self-appointed in that Board members nominate someone to join and the Board then votes according to the bylaws to determine whether the person joins the Board. According to CCSF bylaws, the Board of Directors cannot have less than 11 members, or more than 15. Members may be removed with or without cause only by a vote of two-thirds of the Board. No member of the Board is subject to removal by Chicago Public Schools ("CPS") or by the Illinois State Board of Education. The Board's primary responsibility is to set the mission and vision of the organization. The Board also has a fiduciary responsibility to make sure that money is being spent appropriately. CCSF/CICS has specific growth targets for each of the EMOs it contracts with and if a campus fails to meet those targets, Purvis may make a recommendation to the Board as to whether or not it should renew an EMO's contract.

As the executive director, Purvis is responsible for the hiring of Civitas' CEO who reports to her during his or her tenure. Consequently, Purvis takes the role of announcing the departure of an exiting CEO, or the introduction of a new CEO, to the affected Civitas campuses. Civitas' CEO is evaluated primarily based on adherence to its contract with CCSF/CICS.

Although the CEO is generally responsible for the day-to-day operations on Civitas' campuses, complaints against the CEO by Civitas personnel or teachers are handled directly by Purvis. For other concerns or complaints, Civitas personnel are advised to go through the appropriate Civitas chain of command. By contrast, Purvis is responsible for all personnel who work for CCSF/CICS. Neither Purvis or any other officer or Board member of CCSF/CICS is appointed by a government entity or subject to removal by public officials.

Aside from their separate physical locations, staffs, and reporting hierarchy, CCSF/CICS's day-to-day operations and administration are handled differently than those of Civitas. For example, CCSF/CICS employees have their own handbook, payroll, work, and holiday schedules, which includes a 12-month operation, rather than a "school" schedule that includes a summer vacation. CCSF/CICS employees do not participate in the State Teachers Pension Plan.

CICS receives money from Chicago Public Schools through CCSF, and CICS pays each EMO for the management of the schools in accordance with their contracts. As part of its contract with EMOs, CCSF/CICS sets a cap on the EMOs' site-based contribution, or profit, at a certain percentage and uses a sliding scale depending on how many students are enrolled in campuses managed by each EMO. Last year, CCSF/CICS received about \$60 million of non-private funds (Chicago, state, and federal funds), which made up about 95 percent of the funds that CCSF/CICS received. EMOs do not receive money directly from Chicago Public Schools or any government entity. The amount that CCSF/CICS receives from the Chicago Public Schools is based on the number of students in its campuses, as well as the percentage of students in specific categories, such as those receiving free or reduced lunches, special education, homelessness, and English language learner services. CCSF/CICS also monitors this information for the purposes of making sure that the EMOs are meeting their contractual requirements.

Unlike Civitas, CCSF/CICS is actively involved in fundraising and receives private funds including funding from private foundations, such as Charter School Growth Fund, and individual donors. Money received from private donors may have requirements attached such as providing reports, giving tours, attending meetings, or putting a member from a donor foundation on the Board of Directors. These requirements are not mandated by any public or government official or entity. Although CCSF/CICS submits quarterly budget reports to Chicago Public Schools, there has never been a situation where CCSF/CICS has been requested to alter or amend its budget.

D. Relationship between Civitas and CCSF/CICS

The interchange of employees directly between Civitas and CCSF/CICS has been minimal and limited. Former CCSF employee Theresa Nelson left to become the CEO of Civitas, and Nelson Acevedo, who used to work for Civitas as head of maintenance at Northtown Academy, now works as the facilities manager at CCSF/CICS. In both cases, the individuals applied for the positions available at the respective places. Several other individuals who previously worked for organizations affiliated with CCSF/CICS also applied for and accepted positions with Civitas. Prior to accepting his current position as CEO of Civitas, Hess had worked for an organization called ChicagoRise, a LLC of CCSF that ceased operations in mid-

March 2009. In addition, David Savage and Megan Quailles, current chief financial officer and former CEO for Civitas, respectively, worked for Chicago Charter Management, which also managed schools for CCSF, prior to working for Civitas. When Hess was appointed CEO of Civitas, Purvis took Hess to the three campuses managed by Civitas and introduced him as the new CEO.

Although Hess reports to Purvis, he does not have any direct personal accountability to any government official. Civitas is not subject to any governmental competitive civil service requirements, competitive bidding, or purchasing practices, does not have a state-issued insurance policy, and Civitas employees are not subject to any state of local government wage scales. Civitas designs and implements its own compensation and benefits package. Civitas also develops and maintains its own policy manual that applies to “employees and families of students enrolled at school campuses managed by Civitas Schools.” Hess testified that he is not aware of CCSF/CICS being consulted prior to the hiring, firing, or disciplining of any Civitas staff. Hess stated that when he hired Stacy Beardsley as the Chief Academic Officer, a nurse and a Spanish teacher for Civitas, he did not consult with CCSF/CICS or Chicago Public Schools or any government entity. Although CCSF/CICS and Teach for America have an agreement under which CICS pays a set amount of money to sponsor a certain number of Teach for America members across its network, EMOs, including Civitas, are not obligated to hire any of them. However, if an EMO chooses to hire a teacher from Teach for America, the EMO is responsible for that teacher’s salary and through its sponsorship agreement with Teach for America, CCSF/CICS pays for the extra costs associated with Teach for America teachers. Civitas and CCSF/CICS also share costs on some advertising related to enrollment at the schools.

At a minimum, CCSF/CICS meets quarterly with the EMOs, including Civitas, to go over business and review progress reports on student performance. Purvis testified that she meets with EMO representatives as often as weekly, and sometimes daily, to make sure that the terms of their contracts are being implemented and goals are being met. All EMOs are treated similarly. To this end, CCSF/CICS established a similar code of conduct, required under its contract with authorizer Chicago Public Schools, across all 12 of its campuses. However, EMOs are not required and do not, in fact, offer their employees the same pay and benefits. And although CCSF/CICS has oversight on the curriculum implemented across its campuses, the EMOs determine the textbooks, professional development, materials, and instruction strategies used on its campuses for its curriculum.

IV. Analysis

A. Civitas is Not a Political Subdivision of the State of Illinois

Section 2(2) excludes from the definition of “employer” “...any State or political subdivision thereof.” To determine whether an entity is a political subdivision, the Board applies the test described in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600, 604-05 (1971). See also *Charter School Administration Services, Inc.*, 353 NLRB No. 35 (2008), where the Board found that a private, for-profit Michigan corporation, engaged in the management of charter schools, was an employer within the

meaning of Section 2(2) of the Act and not exempt from the Board's jurisdiction.⁵ The test set forth in *Hawkins* provides that an entity is exempt from the Board's jurisdiction as a political subdivision if it is: (1) created directly by the State so as to constitute a department or administrative arm of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate. *Id.* at 604-05. As explained below, I find under the *Hawkins* test that Civitas is not a political subdivision.

First, the record clearly establishes that Civitas does not fall within the first prong of the *Hawkins* test because it was not created directly by the State of Illinois so as to constitute a department or administrative arm of the government. As the Board stated in *Research Foundation of the City Univ. of NY*, 337 NLRB 965, 968 (2002), "[t]he creation of the Employer by private individuals as a private corporation, without any state enabling action or intent, clearly leaves the Employer outside the ambit of the Section 2(2) exemption."

Second, I find that Civitas is not exempt under the second prong of the *Hawkins* test. In *Charter School Administration Services*, supra, slip op. at 4 (citing *Research Foundation*), the Board provided that the relevant inquiry in determining if an entity is "administered" by individuals responsible to public officials or to the general electorate, is whether the individuals who administer the entity are appointed by and subject to removal by public officials or the electorate.

The record shows that Civitas is not administered by or responsible to any public official or to the general electorate. Civitas has no direct reporting requirements to the State, does not submit its budget to any government entity, and does not receive any revenue directly from public bodies. Civitas, like the three other EMOs, derives its operating revenues from fees paid by CCSF/CICS for the charter school campuses it manages. As the CEO of Civitas, Hess does not take a public oath or enjoy government immunity—Hess is appointed by and subject to removal by Purvis, who is not a public official⁶. Civitas's business operations are conducted by a chain of administrators hired

⁵ Citing *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 2009 WL 1162574 (D.C. Cir., 2009), the Union contends this case should "be given no precedential weight" as it was issued by a two-member Board. I disagree. Pursuant to the provisions of Section 3(b) of the Act, the four members of the five-member Board who held office on December 28, 2007 (Members Liebman, Schaumber, Kirsanow, and Walsh) delegated all of the Board's powers to a three-member group, consisting of Members Liebman, Schaumber and Kirsanow. When the recess appointments of Members Kirsanow and Walsh expired three days later, a properly-established, two-member quorum of that group remained, consisting of Members Liebman and Schaumber. Chairman Schaumber and Member Liebman acted with the full powers of the Board in issuing the Board's in this case. In *Northeastern Land Services, Ltd.*, 560 F.3d 36, 40-42 (1st Cir. 2009), the First Circuit approved the authority of the two-member Board—as a legitimate quorum of a three-member group—to issue decisions. In doing so, the Court relied on the plain text of Section 3(b) and a Ninth Circuit decision upholding the Board panel's authority to act after the resignation of one of its three members, as well as analogous approaches by other administrative agencies that have been upheld by the courts.

⁶ While Purvis is not a public official and is not directly responsible to the general electorate, I have take into account for the sake of argument the possibility that CCSF/CICS could be considered a subdivision of a public body under the second prong of the *Hawkins* test. However, I do not find hiring or removal authority over Hess by CCSF/CICS, another non-public entity, that may be subject to some control by a public body, makes Hess or Civitas

solely for the purpose of implementing and complying with Civitas' obligations under its contract with CCSF/CICS, and are ultimately accountable to Hess and not any public official. No one at Chicago Public Schools or the Illinois State Department of Education has any involvement in the hiring or removal of anyone on Civitas's administrative or teaching staff. Civitas teachers' certification requirements are a direct requirement of the teachers individual contracts with Civitas and failure to obtain certification is a violation of their contract with Civitas, not with Chicago Public Schools or any other government or public entity.

Civitas develops the curriculum implemented on each of its campuses without review or oversight by the Illinois State Board of Education. Civitas has no reporting obligations and does not submit any reports directly to either Chicago Public Schools, the Board of Education, or any public bodies as part of its operations. The record establishes that Civitas is ultimately responsible for the professional training and development of its teachers, and while CCSF/CICS offers some training opportunities, it is up to Civitas and the EMOs to decide whether or not to take advantage of them. The record shows that Civitas and its CEO Hess have complete and sole control over all aspects of the terms and conditions of employment for its employees and teachers, its management structure, labor relations, budget, spending, and all of the day-to-day operations that arise on Civitas' three campuses. As in *Research Foundation*, the fact that Civitas submits certain reports related to budget and curriculum to CCSF/CICS as part of its contractual relationship with CCSF/CICS does not demonstrate any significant control by the government. 337 NLRB at 968-69. Even assuming for the sake of cautious consideration that CCSF/CICS meets the second prong of the *Hawkins* test, the accountability of Civitas to CCSF/CICS under the terms of their contract does not change Civitas from a private entity to a political subdivision of a public body. As the Board observed in *Charter School Administration Services*, slip op. at fn. 20, "It would be a rare government contract that did not afford the government oversight of the contract, and the ability of the government to correct or cancel a contract does not, without more, change the private nature of the contracting entity."

In sum, Civitas, on its own or through its contractual responsibilities to CCSF/CICS, is not a political subdivision of a public body exempt from the Board's jurisdiction. Furthermore, Civitas is clearly an "employer" within the meaning of Section 2(2) of the Act given the high degree of control that Civitas exercises over the labor relations with its employees regarding hiring, firing, discipline, rates of pay, subject matter taught, and the negotiation of contracts of teachers who work on Civitas campuses. *Charter School Administration Services*, slip op. at 6.

Most of the factors and cases cited by the Union in support of its position that Civitas is a subdivision of the State of Illinois are more appropriately applicable to the operations of CCSF/CICS rather than Civitas. They would be applicable to Civitas only if it is a single employer with CCSF/CICS as the Union contends. Thus, most of the cases relied upon by the Union, particularly the Regional Director decisions finding

responsible to the public body. Such indirect authority is too amorphous to define Hess' responsibility to the public body.

charter schools operating under the California charter school law to be exempt from the Board's jurisdiction, involve entities that are directly chartered by a public body and have a direct relationship with that public body, including being subject to certain state laws and directly receiving their funding from the public body. These factors are more comparable to CCSF/CICS, which directly receives funding from political bodies and has the more direct relationship with a political body, the Chicago Public Schools, than does Civitas. The situation of Civitas is more closely related to the employer in *Charter School Administration Services*. The employer in that case, like Civitas, was an EMO that contracted with the Academy holding the charter with the State of Michigan. While the issue of single employer was not raised in *Charter School Administration Services*, the parties and the Board for the purposes of the decision, assumed that Academy, which hold the charter, was a political subdivision of the state. Nevertheless, the Board found that the EMO operating under contract with the Academy was subject to the Board's jurisdiction because the EMO, like Civitas, did not directly receive public funding and no one at the EMO was directly accountability to public officials or the general electorate.

B. Civitas and CCSF/CICS Do Not Constitute a Single Employer

To a great extent, the Union's position that Civitas is a political subdivision of the State of Illinois is based on its contention that: "Since CICS and Civitas are a single employer, and CICS is a political subdivision, Civitas is also a political subdivision." However, I find that the predicate for the Union's position, that Civitas is a single employer with CCSF/CICS, is not supported by the record.

The Board considers four factors to determine whether two "ostensibly separate entities" constitute a single employer: common ownership, common management, interrelation of operations, and common control of labor relations. *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1283-84 (2001). See also *Dow Chemical Co.*, 326 NLRB 288 (1985), citing *Radio Technicians Local 1264 v. Broadcast Service of Mobile*, 380 U.S. 255, 256 (1965); *Emsing's Supermarket*, 284 NLRB 302 (1987), *enfd.* 872 F.2d 1279 (7th Cir. 1989). In applying this test, no single factor is controlling, and not all need be present. Rather, single-employer status depends on all the circumstances, and is characterized by the absence of the arm's-length relationship found between unintegrated entities. *Mercy Hospital*, 336 NLRB at 1284. The Board has generally held that the most critical factor is centralized control over labor relations. *Id.*

In *Dow Chemical*, the Board found that a company and its wholly-owned subsidiary were not a single employer. In applying the four-part test of whether two separate entities constitute a single employer, the Board held that despite the common ownership, the absence of the other three factors determined that no single employer situation existed. 326 NLRB at 289-90. In *Mercy Hospital*, the Board reversed the administrative law judge's decision that Respondent Mercy Hospital and its joint venture, Southtowns Catholic MRI, were a single employer. 336 NLRB at 1282. Like its decision in *Dow Chemical*, the Board in *Mercy Hospital* found that despite "some degree of common ownership," the "other three factors, including the 'critical' factor of centralized control of labor relations, [were] absent." *Id.* at 1287. Applying the single

employer analysis to the record in the instant matter, I find that Civitas and CCSF/CICS do not constitute a single employer for the reasons set forth below.

1. *Common Ownership*

Since Civitas is owned by CCSF, the factor of common ownership is present. However, common ownership alone does not establish a single-employer relationship. Common ownership by itself indicates only *potential* control over the subsidiary by the parent entity; a single-employer relationship will be found only if one of the companies exercises *actual* or *active* control over the day-to-day operations or labor relations of the other. *Dow Chemical*, 328 NLRB at 288 (emphasis in original), citing *Masland Industries*, 311 NLRB 184, 186 (1993). The record establishes that Civitas and CCSF/CICS each maintains operational independence.

2. *Common Management*

The record establishes that Civitas and CCSF/CICS do not share common management. Similar to the situation and findings in *Dow Chemical*, the record in the instant matter clearly establishes that Civitas and CCSF/CICS are comprised of a top manager, who each has a separate line of individuals who report to him or her. 329 NLRB at 288-89. As described above, Simon Hess, who is in charge of Civitas as its CEO, has individuals who report directly to him and to no one at CCSF/CICS. Elizabeth Purvis, the Executive Director of CCSF/CICS, has her own “leadership team” that reports directly to her only. The record shows that despite the fact that Hess was hired by Purvis and ultimately reports to her, this does not provide Purvis with opportunity to control, let alone actively participate, in the day-to-day operations of Civitas. Given that Civitas and CCSF/CICS have no common officers and there are no CCSF/CICS managers who control the day-to-day operating decisions of Civitas, I find no common management to support single employer status.

3. *Interrelation of Operations*

It is undisputed that Civitas’ business is dependent on CCSF/CICS. However, that fact alone does not suggest that the operations of Civitas and CICS are so interrelated that they are a single employer. Rather, the record shows that the daily operations of Civitas and CICS are not integrated. In *Research Foundation*, supra at 971 (2002), the Board looked at a variety of factors in determining that the operations of the employer and City University of New York (CUNY) were not substantially interrelated despite the fact that the employer operated its outreach programs on CUNY’s campus. In making its determination, the Board considered the operating locations of the entities, computer and payroll systems, compensation plans and benefits, interchange of employees, separate filing of tax returns, and separate legal representation—in sum, whether there was “a legal and fiscal separation” between the two.

In the instant case, Civitas and CCSF/CICS maintain their own separate office space, administrative staff, bank accounts, phone systems, computers, software licenses,

workers compensation insurance, and general liability insurance. Civitas employs its own office staff, none of whom are also CCSF/CICS employees. Until the hearing in the instant matter, Civitas and CCSF/CICS had separate legal counsel, CCSF/CICS was represented by the law firm of Goldberg Kohn and Civitas was represented by the law firm of Seyfarth Shaw. Their decision to share representation by Goldberg Kohn for the hearing was a cost-effective way to address the situation, with each entity to be billed separately for their proportionate share. Civitas and CCSF/CICS also file separate tax returns.

Civitas pays CICS a three percent management fee and part of that fee covers Civitas' access to CICS staff members for providing professional development seminars on campus, or school-related data that its chief data analyst may maintain. While CICS does not oversee or monitor the professional development of teachers in the Civitas schools, CICS does offer professional development opportunities that EMOs can choose to participate or not, and Civitas can, if it chooses, obtain training and development courses from other vendors. The management fee also covers Civitas' use of the PowerSchool software that resides on the CICS server, and which teachers on Civitas' campuses use to input information about students, including attendance, grades, or special accommodations.

Although CICS employees may participate in Civitas' 401(k) plan, payments for the 401(k) plan come directly through CICS payroll system and Civitas is not involved in processing CICS payroll or 401(k) payments or making any contributions on behalf of CICS employees. Further, money contributed from CICS employees does not go to Civitas, but goes to a managing company that manages the plan for CICS. While CICS employees can also participate in Civitas' health insurance plan, Civitas bills CICS for all premiums related to CICS employees on a monthly basis. Although CICS owns or leases the buildings and the land that CICS campuses operate on, and in turn leases them to Civitas, those arrangements are pursuant to their contractual agreement, which provides for reimbursement. As part of their contract, CICS charges Civitas a per pupil rent for buildings leased to them. There is no evidence that any of these agreements between Civitas and CICS is not at arm's length and the Board has found that such mutually convenient agreements do not detract from the corporate independence of the entities. *Mercy Hospital*, supra at 1286. Furthermore, Civitas is only one of four EMOs that contract with CCSF/CICS, all of which operate with CCSF/CICS under similar terms and conditions.

4. *Centralized Control of Labor Relations*

In determining whether two entities are a single employer, the Board generally finds centralized control of labor relations to be the most critical factor. *Mercy Hospital*, supra at 1284; *Dow Chemical*, supra. The record shows that there is no centralized control of labor relations between Civitas and CICS. The labor relation functions of both entities are completely separate. While Hess ultimately reports to Purvis and is subject to removal by CICS, he is the only one at Civitas subject to any control by CCSF/CICS.

Further, the record shows that this does not provide CCFS/CICS the opportunity to be directly involved in the day-to-day operations at Civitas (or that of any other EMOs).

Labor relations decisions such as hiring, firing, disciplining employees, assigning work, and directing the work of Civitas employees rests solely in the hands of Civitas as provided for in the contract between Civitas and CCSF/CICS. Teachers who work on the CICS campuses managed by Civitas enter into contracts only with Civitas and all aspects of a teachers' employment—for example, salary, certification requirements, benefits, length of employment, discipline, termination, and other responsibilities and expectations—are negotiated solely between Civitas and the individual teacher. The record does not show that CCSF/CICS has any part in the negotiation or approval of contracts negotiated between teachers and Civitas. All certified teachers at Civitas who are eligible and participate in the Chicago Teachers Pension Fund Plan contribute two percent of their salaries and Civitas pays seven percent. Civitas made the decision on its own to contribute seven percent (out of the nine percent mandated) for each teacher in an effort to be more competitive with the market. Although CCSF/CICS provides professional development seminars to Civitas teachers on occasion at the request of Civitas, this does not show a centralized labor relations function. Aside from the fact that a portion of the fee that Civitas pays CCSF/CICS covers this type of activities, the record also shows that other entities and vendors provide similar inservices to teachers for professional development training. The only time that CCSF/CICS would be involved in any personnel matters at Civitas concern problems or complaints that involved the CEO.

The Union asserts that CCSF/CICS and Civitas are a single employer because Purvis, on behalf of CCSF/CICS, distributed a letter to teachers that stated CCSF/CICS's position with respect to unionization on CICS campuses. However, I do not find that such distribution, even coupled with surveys conducted to gauge teacher satisfaction at the schools, are sufficient on their own to show centralized control over labor relations. The Board has clearly established that a multitude of factors, described above, are to be considered when determining whether two separate entities have centralized control over labor relations. Based on the record, I find no centralized control of labor relations between Civitas and CCFS/CICS. I further find that the evidence does not support a single employer relationship between Civitas and CCFS/CICS.

C. Whether CCSF/CICS is a Political Subdivision

The issue of whether CCSF/CICS is a political subdivision of the State of Illinois only needs resolution if Civitas was found to be a single employer with CCSF/CICS and its status as a political subdivision was dependent upon the status of CCSF/CICS being a political subdivision of the State of Illinois. As I have found that Civitas, on its own, is not a political subdivision and that it is not a single employer with CCSF/CICS, the status of CCSF/CICS by itself does not impact the status of Civitas. Accordingly, I do not need resolve whether CCSF/CICS is a political subdivision of the State of Illinois.

V. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Chicago Alliance Of Charter Teachers And Staff, Illinois Federation Of Teachers (AFT), AFL-CIO.

VI. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, 209 South LaSalle Street, 9th Floor, Chicago, Illinois 60604, on or

before **June 9, 2009**. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **June 16, 2009**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 2nd day of June, 2009.



Joseph A. Barker, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, Illinois 60604

Blue Book – 177-1683-5000; 177-1600

CATS — Jurisdiction – Exempted Employer

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