



Charter schools and collective bargaining: Implications for authorizing agencies

Charter schools are traditionally considered to be free of the bureaucratic processes that burden the traditional public school system, but they are potentially subject to one of the major obligations affecting public school employee relations: navigating relationships with public employee unions. Although unionization of charter school staffs has not yet become widespread in charter schools, the Education Code does allow for this possibility. It remains to be seen whether the necessary political and cultural forces will lead to widespread unionization of charter school employees. However, the Education Code does allow a path for charter school employees to certify an exclusive representative under the Rodda Act (Government Code Section 3540 *et seq.*), the state law governing school district employer-employee relations, and in fact such employee organization in charter schools has taken place throughout the state. This article will explore how the Education Code makes this possible, and what the implications are for the oversight duties of charter authorizers.

The status quo

The prevalent (though not exclusive) model for charter school employment throughout California involves terms and conditions of employment being established either through individual employee contracts or charter school employee policies or handbooks. The employment relationship is closer to an “at-will” model than it is to the traditional public employee model based on collective bargaining. In accordance with Education Code Section 47611.5(b), the charter petition will have elected that the charter school, and not the school district, will be considered the exclusive employer for purposes of the Rodda Act.

Nonetheless, a provision of the Charter Schools Act,

Education Code Section 47611.5(a), specifically provides that the Rodda Act applies to charter schools. Therefore, charter schools electing exclusive employer status are still subject to the obligations placed upon public school employers under the Rodda Act, some of which apply even if the charter school’s employees don’t certify an exclusive representative.

Although the duty to bargain negotiable terms and conditions of employment is usually considered the primary school employer obligation under the Rodda Act, a charter school must also comply with other obligations under the act, including the obligation not to dominate or interfere with the formation or administration of any employee organization, or to encourage employees to join one organization in preference to another (Gov. Code, Section 3543.5 (d)); and the obligation not to retaliate or discriminate against employees for engaging in protected activity, such as instigating employees to certify a union (Gov. Code, Section 3543.5 (a)).

California courts have applied the obligations of the Rodda Act to charter schools even where the obligations do not directly relate to negotiating the terms and conditions of employment. The court of appeal in *California Teachers Association v. Public Employment Relations Board* (2009, 169 Cal.App.4th 1076), allowed a complaint to proceed against a charter school alleging the retaliatory firing of three charter school teachers for co-authoring a letter criticizing the charter school’s governance council regarding its financial and management decisions. In so holding, the court of appeal cited Education Code section 47601(d), which contains the legislative intent that charter schools “create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the schoolsite,” and concluded that charter school

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teachers had an enhanced interest in shaping the educational program at the school, thereby increasing the possibility that any such expressions toward this end would be considered protected activity under the Rodda Act.

Implications for authorizing entities

Charter authorizing entities are responsible for ensuring that their charter schools comply with applicable law. Education Code section 47607(c)(4) allows a charter authorizer to revoke a charter that "violated any provision of law." Education Code section 47604(c) expressly ties an authorizing agency's potential liability for a charter school's acts, errors or omissions on the authorizer's performance of its oversight duties: "An authority that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation is not liable for the debts or obligations of the charter school, or for claims arising from the performance of acts, errors, or omissions by the charter school, if the authority has complied with all oversight responsibilities required by law."

Much of the public debate regarding charter school accountability centers upon charter schools' academic performance and financial condition. However, a charter authorizer's legal oversight duties also include ensuring that the charter school achieves compliance with all applicable provisions of law. The Education Code is clear that these legal obligations include a charter school's duties to comply with all provisions of the Rodda Act, especially where the charter school has elected exclusive employer status.

Although political and cultural forces have not yet converged in a manner that would cause employee organizations to achieve widespread status in charter school employee relations, certain obligations under the Rodda Act, such as noninterference in the formation of an exclusive representative and the duty not to discriminate or retaliate against the exercise of protected rights, apply to charter schools irrespective of whether an exclusive representative has been certified. Authorizing agencies must therefore ensure that their oversight efforts include ensuring that charter schools that elect the status as exclusive public school employers are well versed in their duties as public school employers under the Rodda Act. CS

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