

A young girl with blonde hair, wearing a blue sweater, is smiling and holding a pair of blue-handled scissors. She is cutting a piece of pink paper. In the background, another child is visible, also smiling. The scene is brightly lit, suggesting an indoor setting like a classroom or a craft activity.

**ATLANTIC LEGAL'S GUIDE TO**

# **LEVELING THE PLAYING FIELD**

**WHAT CALIFORNIA  
CHARTER SCHOOL LEADERS  
NEED TO KNOW ABOUT  
UNION ORGANIZING**

**Third Edition**

**Jackson Lewis PC**

Atlantic Legal Foundation

ATLANTIC LEGAL'S GUIDE TO  
LEVELING THE PLAYING FIELD

What California Charter School Leaders  
Need To Know About Union Organizing

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Jackson Lewis P.C.

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Harrison, New York 10528

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# LEVELING THE PLAYING FIELD

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Need To Know About Union Organizing

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## Preface

For nearly 25 years, California's charter school movement has energized public education with a robust infusion of innovative, high quality schools that are helping to close the achievement gap across the state. Since the last publication of this book, charter schools have grown in number from 800 to more than 1,200 strong, serving over 600,000 students statewide.

As the movement has grown, so has our opposition, and unfortunately a vocal opponent of charter public schools has been the California Teachers Union (CTA) which has been responsible for perpetuating a number of myths about charter schools. This rhetoric belies the fact that the public has never been more supportive of charter public schools. CCSA and charter schools across California work to share the "Truth about Charters" ([www.ccsa.org/understanding/truthaboutcharters](http://www.ccsa.org/understanding/truthaboutcharters)) to counter these myths.

One of these truths is that charter schools are *public* schools. And from that emanates our view that charter school teachers and employees are *public* employees. Thus, when the Internal Revenue Service raised concerns about the eligibility of charter school employees for public retirement systems,

CCSA advocated for clarity from the federal government for continued participation. Similarly, when the issue arose in the California Legislature about the jurisdiction of the California Public Employee Relations Board (PERB) over charter school collective bargaining issues in light of recent decisions from other states by the National Labor Relations Board (NLRB), we became concerned. The success of our charter schools depends upon many things, but there is no doubt that a strong public teaching force plays a critical role. Teachers are directly positioned to deliver on the promise of the charter school movement. In furtherance of this view, CCSA continues to support the applicability of the Education Employment Relations Act (EERA) to charter schools, and that California's PERB is the right place for determining charter school labor issues.

Charter schools bring flexibility which nurtures a diversity of perspectives and approaches, some with models that integrate collective bargaining into their design. Whatever choice the public charter school teachers choose on unionization, they should make those choices with the benefit of full information, transparent communication, and clarity about the roles and responsibilities of charter public school staff, board members, and all others engaged in each charter's school community. It is our hope that this guide will answer important questions about the unionization process, what charter leaders must do to foster positive labor relations, and where and how to seek help to maintain strong outcomes for our public school students.

***Jed Wallace***

President & CEO

California Charter Schools Association

# Foreword

The Atlantic Legal Foundation, a public interest law firm now in its 40th year of operation, has been proud to represent charter school advocates contending that charters should be given freedom to develop innovative programs leading to academic success. We welcome this opportunity to serve the charter community.

Efforts to organize charter school teachers and other employees, altogether lawful, are likely to have a significant impact on the flexibility the school needs to meet its charter responsibilities, and charter administrators need to know how to react when the union seeks to represent employees.

This thorough guide – an important component of Atlantic Legal’s Charter School Advocacy Program – offers advice that is not always available from corporate or not-for-profit attorneys who often are not skilled in labor law matters. Labor law is highly technical. Charter boards and administrators are well advised to seek counsel from firms that practice regularly in this area.

In preparing this guide Atlantic Legal has enlisted the services of Jackson Lewis, P.C., a prominent national law firm whose practice is limited to representing employers in a wide variety of labor and employment law matters. This guide is one in a series, the first of which was prepared by New York Jackson Lewis partners Thomas V. Walsh, Esq. and Roger S. Kaplan, Esq. We are grateful to David S. Allen, Esq. who assisted in preparation of this new California edition. Following Mr. Kaplan's retirement, Mr. Walsh continues to serve as series editor. The guidance of the Jackson Lewis firm in this complex area is greatly appreciated.

Careful consideration of this discussion of union organizing efforts and how they can be anticipated and addressed will ensure that charter leaders comply with the law while making their views about dealing with a union known to staff members.

***Hayward D. Fisk***

Chairman and President

Atlantic Legal Foundation

# I The Landscape

When California enacted the Charter Schools Act of 1992, it became the second state in the nation to adopt legislation introducing charter schools as an alternative to the traditional public school. Indeed, in doing so, the legislature stated that it intended charter schools to “improve pupil learning” and “encourage the use of different and innovative teaching methods.” (Cal. Educ. Code § 47601(a), (c)). Many of those dissatisfied with the often lackluster performance of conventional public schools turned to the Charter Schools Act with the expectation that flexibility and innovation would improve student achievement in exchange for rigorous accountability.

Many leaders of the charter school movement have been staunch critics of the status quo perpetuated, in part, by rigid collective bargaining agreements that can stifle the creativity and flexibility needed to test new educational delivery systems. Many observers conclude that the need for charter schools has grown in proportion to the defects in the current public education system in California – a system in which virtually every conventional school administration is restrained by the limits of its union contract.