

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. 94-4(CE)
)	
UNITED PUBLIC WORKERS, AFSCME,)	ORDER NO. 1129
LOCAL 646, AFL-CIO,)	
)	ORDER DISMISSING UNFAIR LABOR
Complainant,)	PRACTICE COMPLAINT WITHOUT
)	PREJUDICE
and)	
)	
CHILD AND FAMILY SERVICE,)	
)	
Respondent.)	

ORDER DISMISSING UNFAIR LABOR
PRACTICE COMPLAINT WITHOUT PREJUDICE

On August 16, 1994, the Hawaii Labor Relations Board (Board) issued Order No. 1094, Order Denying Respondent's Motion to Dismiss; Notice of Hearing on Unfair Labor Practice Complaint.¹ In that Order, a Board majority found that "the Board has continuing jurisdiction over cases arising pursuant to certifications of election issued by the Board and its predecessor." Order No. 1094, p. 5. Furthermore, the Board majority held that "until such time as the NLRB asserts jurisdiction over the matter, the Board retains jurisdiction over the instant complaint." Id. at 5-6.

The Board therefore scheduled a hearing on the merits of the instant complaint on September 2, 1994.

On or about August 22, 1994, Respondent CHILD AND FAMILY SERVICE (CFS) filed a Petition for Advisory Opinion with the

¹To avoid reiteration of the procedural history in this case, the Board's Order No. 1094, Order Denying Respondent's Motion to Dismiss; Notice of Hearing on Unfair Labor Practice Complaint, dated August 16, 1994, is incorporated herein by reference.

National Labor Relations Board (NLRB) in Case No. AO-315. CFS petitioned the NLRB to issue an advisory opinion concerning whether the NLRB would assert jurisdiction over CFS in the instant matter pending before the Board.

Also, on August 22, 1994, CFS filed a motion to continue the September 2, 1994 hearing with the Board. CFS requested a continuance until such time as the NLRB ruled on CFS's Petition for Advisory Opinion. Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) objected to the continuance and the Board denied CFS's motion on the basis that at that time, no further evidence had been presented to the Board to indicate that the NLRB would assert jurisdiction over the instant matter. See Order No. 1100, Order Denying Respondent's Motion to Continue Hearing on Unfair Labor Practice Complaint, dated August 30, 1994.

Subsequently, the Board rescheduled the hearing in this matter on October 3, 1994.

Prior to the commencement of the October 3, 1994 hearing, CFS presented the Board with a copy of an NLRB advisory opinion issued on September 29, 1994 in Case No. AO-315, Child & Family Service, Petitioner and United Public Workers, AFSCME, Local 646, AFL-CIO, 315 NLRB No. 6 (1994). In the advisory opinion, the NLRB concluded that "the [NLRB] would assert jurisdiction over [CFS]." 315 NLRB No. 6 at 2 (footnote omitted). In reaching its decision, the NLRB stated:

the [NLRB] is of the opinion that, based on the foregoing commerce data, it would assert jurisdiction over [CFS]. Contrary to the Union's contention, the fact that the HLRB previously has asserted jurisdiction over

[CFS] does not preclude the NLRB from asserting jurisdiction at a later date.

Id. at 1 (footnotes omitted).

Based upon the advisory opinion issued by the NLRB, CFS contends that the Board lacks jurisdiction to proceed in this matter. See Transcript of hearing on October 3, 1994 (Tr. II), p. 6.

Section 377-1(3), Hawaii Revised Statutes (HRS), provides for federal preemption of state law and states in relevant part:

"Employee" . . . shall not include . . . any individual subject to the jurisdiction of the Federal Railway Labor Act or the National Labor Relations Act, as amended from time to time

Moreover, § 377-1(2), HRS, provides in relevant part that an "[e]mployer" means a person who engages the services of an employee"

Based upon the NLRB's determination that it would assert jurisdiction over CFS, the Board finds that CFS and its employees are subject to the jurisdiction of the National Labor Relations Act (NLRA). Consequently, by definition, CFS and its employees are no longer subject to Chapter 377, HRS, and the jurisdiction of the Board. See §§ 377-1(2) and (3), HRS. In view of the NLRB's advisory opinion and applicable state law, the Board concludes that it is without jurisdiction to proceed in this matter and hereby dismisses this case.

While the UPW requested the Board to continue this matter pending clarification from the NLRB as to whether it would certify the UPW as the representative of the current unit under § 9(c) of the NLRA, see Tr. II, pp. 4-6; see also 315 NLRB No. 6 at 2, n.5,

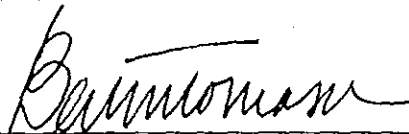
the Board cannot suspend proceedings in matters over which it has no jurisdiction.

ORDER

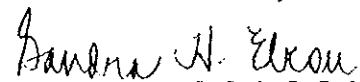
The Board hereby dismisses the instant unfair labor practice complaint without prejudice.

DATED: Honolulu, Hawaii, NOVEMBER 23, 1994.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


SANDRA H. EBESU, Board Member

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