

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. 93-2(CE)
SPANGLER K. LEWIS,)	ORDER NO. 977
)	
Complainant,)	ORDER GRANTING RESPOND-
)	ENT'S MOTION TO DISMISS
and)	
)	
BHP PETROLEUM AMERICAS (HAWAII),)	
INC.,)	
)	
Respondent.)	

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

On June 4, 1993, Complainant SPANGLER K. LEWIS (LEWIS), by and through his counsel, filed a prohibited practice complaint against BHP PETROLEUM AMERICAS (HAWAII), INC. (BHP) with the Hawaii Labor Relations Board (Board). LEWIS alleges that the Respondent violated §§ 377-6(6) and (8), Hawaii Revised Statutes (HRS), by inter alia, suspending and terminating Complainant.

On July 30, 1993, Respondent BHP filed a Motion to Dismiss with the Board. BHP contends that the Board should dismiss the instant complaint because 1) Complainant does not meet the definition of "employee" in § 377-1(3), HRS and therefore Chapter 377 cannot be applied to Complainant; 2) even if the definition of "employee" did not exclude Complainant from coverage under the Employment Relations Act, federal law preempts state law on this matter; and 3) Complainant's complaint concerns a matter of contract interpretation and the matter should be deferred to the

arbitration process. According to BHP's motion, the Complainant was discharged for misconduct. Complainant thereafter filed a complaint with the National Labor Relations Board (NLRB) alleging that his discharge violated the National Labor Relations Act. Further, Complainant sought arbitration of the discharge. In addition, LEWIS filed this complaint before the Board alleging that BHP violated the collective bargaining agreement.

A hearing was conducted by the Board on the motion on August 9, 1993. The parties were represented by counsel and had full opportunity to present their arguments to the Board.

Based upon a thorough review of the record, the Board makes the following findings and conclusions.

LEWIS was employed as a service technician for Gasco, Inc., a public utility and a subsidiary of BHP. BHP furnishes goods or services of at least \$50,000 a year to other concerns which are interstate or foreign instrumentalities or channels of commerce; other public utilities or transit systems; or enterprises which produce or handle goods destined for shipment to other states, or perform services outside the state in which such enterprises are located, where the value is at least \$25,000 a year.

LEWIS was terminated for misconduct. A grievance was filed by the union and the matter was processed through the grievance procedure to arbitration. The arbitration of LEWIS' grievance is pending. On June 3, 1993, LEWIS filed an unfair labor practice complaint against BHP with the NLRB. By letter, dated July 14, 1993, the NLRB deferred the charge to arbitration in

accordance with the doctrine in Collyer Insulated Wire, 192 NLRB 837 (1971).

Section 377-1, HRS, provides the definition of "employee" and states, in pertinent part:


- (3) "Employee" includes any person, . . . working for another for hire in the State . . . but shall not include any individual . . . subject to . . . the National Labor Relations Act, as amended from time to time; provided that the term "employee" includes any individual subject to the jurisdiction of the National Labor Relations Act, as amended from time to time, but over whom the National Labor Relations Board has declined to exercise jurisdiction or has indicated by its decision and policies that it will not assume jurisdiction.

In this case, the record indicates that BHP is engaged in interstate commerce under standards established by the NLRB. As such, the NLRB has asserted jurisdiction over LEWIS and his unfair labor practice complaint. While the NLRB deferred the charge for arbitration in accordance with the Collyer doctrine, it is clear that the NLRB retained jurisdiction over the matter pending the outcome of the arbitration. As such, LEWIS does not fall within the definition of "employee" in Chapter 377, HRS, and the Board lacks jurisdiction over this complaint.

Based upon the foregoing, the Board hereby dismisses the subject complaint.

DATED: Honolulu, Hawaii, October 15, 1993.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson

SPANGLER K. LEWIS and BHP PETROLEUM AMERICA (HAWAII), INC.; CASE
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Sandra H. Ebesu

SANDRA H. EBESU, Board Member

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