

In the Matter of W.M.P. Security Service Company.
Case AO-295

June 8, 1992

ADVISORY OPINION

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board Rules and Regulations, on April 27, 1992, W.M.P. Security Service Company (the Employer) filed a petition for an advisory opinion as to whether the Board would decline to assert jurisdiction over it on the basis of the Board's current standards or because the Employer is not within the jurisdiction of the Act. In pertinent part the petition alleges as follows:

1. A representation proceeding, Case 92-1(R) is currently pending before the Hawaii Labor Relations Board (HLRB) in which Hawaii Teamsters and Allied Workers, Local 996 (the Union) is seeking to represent certain employees of the Employer.

2. The Employer, a California corporation, is a government contractor performing security and guard services at the U.S. Naval Air Station at Barbers Point, Hawaii. The Employer maintains and performs contracts for the U.S. Government having a value in excess of \$1 million per year.

3. The aforesaid commerce data has not been denied by the Union and there has been no finding by any agency or court with respect thereto.

4. There is no representation or unfair labor practice proceeding involving the same dispute currently pending before the Board.

5. Although all parties were served with a copy of the Petition for Advisory Opinion, none filed a response.

Having duly considered the matter,¹ we find as follows. First, based on the Employer's commerce allegations, we are of the opinion that, if there is statutory jurisdiction under the NLRA, the Board would assert discretionary jurisdiction over the Employer under the

¹The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Board's current standards. The standard for asserting discretionary jurisdiction over nonretail enterprises such as the Employer is an annual minimum of \$50,000 inflow or outflow, direct or indirect.² Here, the Employer alleges that its annual revenues from its contracts with the U.S. Government exceed \$1 million. Thus, assuming the Employer is a single employer with respect to those contracts,³ the Employer would clearly satisfy at least the \$50,000 indirect outflow standard.⁴

We are unable in this proceeding, however, to resolve the second issue raised by the Employer: whether the Employer, although meeting the Board's commerce standards for asserting jurisdiction, is nevertheless outside the jurisdiction of the Act. The Board's advisory opinion proceedings under Section 102.98(a) are designed primarily to determine whether an employer's operations meet the Board's commerce standards for asserting jurisdiction; issues relating to whether the Board would decline to assert jurisdiction because the employing enterprise is not within the jurisdiction of the Act may appropriately be raised in an advisory opinion proceeding only by a state or territorial agency or court under Section 102.98(b).⁵

Accordingly, the parties are advised that, based on the allegations in the petition, the Board would assert discretionary jurisdiction over the Employer under the Board's current standards if the Employer is subject to the statutory jurisdiction of the Act. However, we are unable in this proceeding to advise whether the Employer is within the statutory jurisdiction of the Act.⁶

²See *Globe Security Systems*, 137 NLRB 109, 110 (1962).

³The Board looks to the totality of an employer's operations in determining whether the employer satisfies the Board's jurisdictional standards. See *Siemons Mailing Service*, 122 NLRB 81, 84 (1958).

⁴Indirect outflow refers to sales of goods or services within the State to users meeting any of the Board's jurisdictional standards except solely an indirect inflow or indirect outflow standard. The Board has previously taken notice that the U.S. Government is such a user. See *Mackie's Roofing & Sheet Metal Co.*, 221 NLRB 227 fn. 1 (1975).

⁵See *Command Security Corp.*, 293 NLRB 593 (1989), and cases cited.

⁶Nor is the instant Advisory Opinion intended to express any view as to whether the Board would certify the Union as representative of the petitioned-for unit under Sec. 9(c) of the Act. See generally Sec. 101.40(e) of the Board's Rules.