

Community Action of Minneapolis, Petitioner and American Federation of State, County and Municipal Employees District Council No. 14, Local Union No. 9, AFL-CIO and Minneapolis Professional Employees Association. Case AO-312

April 22, 1994

ADVISORY OPINION

BY MEMBERS STEPHENS, DEVANEY, AND
BROWNING

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on February 18, 1994, Community Action of Minneapolis, the Petitioner, filed a petition for Advisory Opinion as to whether the Board would assert jurisdiction over its operations. The other parties to the proceeding are the American Federation of State, County and Municipal Employees District Council No. 14, Local Union No. 9, AFL-CIO (AFSCME), and the Minneapolis Professional Employees Association (MPEA). In pertinent part, the petition alleges as follows:

1. Two representation proceedings, Docket Nos. 94-PCE-1051 and 94-PCE-1114 are currently pending before the Minnesota Bureau of Mediation Services in which AFSCME seeks certification in a unit of clerical employees (94-PCE-1114).¹

2. The Petitioner is a private, nonprofit corporation which provides fuel assistance services and self-sufficiency programs to low income residents of the city of Minneapolis.

3. During the past year, the Petitioner had gross revenues from sales or performance of services of more than \$1 million, and purchased materials or services in excess of \$50,000 directly from outside the State of Minnesota.

¹MPEA filed a response to the request for advisory opinion. It does not challenge the Petitioner's allegations concerning gross revenues and purchases from outside the State of Minnesota, but asserts that the Board does not have jurisdiction over the Petitioner because it is a political subdivision of the State of Minnesota.

4. There are no representation or unfair labor practice proceedings involving the Petitioner pending before the Board.

Having duly considered the matter, the Board finds as follows:²

First, based on the Petitioner'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 Petitioner under current Board standards.

We are unable in this particular proceeding, however, to resolve the issue presented by MPEA, viz, whether the Petitioner is a political subdivision of the State of Minnesota. 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).³

Accordingly, the parties are advised that, based on the allegations in the petition, the Board would assert discretionary jurisdiction over the Petitioner under the Board's current standards if the Petitioner is subject to the Board's statutory jurisdiction. However, as the instant petition was not filed under Section 102.98(b), we are unable in this proceeding to advise whether the Petitioner comes within the Board's statutory jurisdiction.⁴

Accordingly, the petition for Advisory Opinion must be dismissed.

²The Board has delegated its authority in this proceeding to a three-member panel.

³See *W.M.P. Security Service Co.*, 307 NLRB 823 (1992), and *Command Security Corp.*, 293 NLRB 593 (1989), and cases cited.

⁴Nor 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.