

Brooklyn Bureau of Community Service and Community and Social Agency Employees' Union District Council 1707, AFSCME, AFL-CIO.
Case AO-335

April 15, 1996

ORDER DISMISSING PETITION FOR
ADVISORY OPINION

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on March 7, 1996, Brooklyn Bureau of Community Service (BBCS), the Employer, filed a petition for Advisory Opinion as to whether the Board would assert jurisdiction over its operations. In pertinent part, the petition alleges as follows:

1. A proceeding (Case No. SE-59020) is currently pending before the New York State Employment Relations Board (SERB) in which Community and Social Agency Employees' Union District Council 1707, AFSCME, AFL-CIO, the Union, is seeking certification as the representative of 55 day care providers who provide day care services to children.

2. BBCS is a multifaceted, not-for-profit social service agency with its principal place of business at 285 Schermerhorn Street, Brooklyn, New York. BBCS provides a full range of programs including day care, foster care placement prevention, homemaking for families with children, job training and placement for adults with disabilities, continuing day treatment for persons with mental illness, clubhouses for psychiatric rehabilitation, day habitation for persons with mental retardation, transitional living for mentally ill homeless women, and family day care. BBCS employs 433 employees in approximately 13 locations throughout Brooklyn, New York.

3. BBCS receives revenues from contracts with Federal, state and city governments, private contracts, and charitable donations. In 1995, BBCS had revenues of \$16,093,591, and it anticipates revenues of \$14,259,470 for 1996. BBCS purchases goods in excess of \$500,000 annually from sources directly and indirectly outside the State of New York.

4. The SERB has not made any findings with respect to the foregoing commerce data.

5. There are no representation or unfair labor practice proceedings involving the parties pending before the Board.

On March 11, 1996, the Union filed a response to the petition for Advisory Opinion. The Union contends that its representation petition before the SERB seeks certification only of the family day care providers employed at the BBCS Family Day Care Center; that while it may be true that BBCS has a revenue projection as set forth in its petition for Advisory Opinion, that revenue is not totally generated by the day care facility; that the BBCS day care facility has substantially less revenue than admitted in the petition for Advisory Opinion; and that day care is a financially independent component of BBCS.

Having duly considered the matter,¹ we find that the record is inadequate to make a meaningful jurisdictional determination in this proceeding. As indicated above, BBCS seeks a determination as to whether the Board would assert jurisdiction over its multifaceted operations. The Union, however, asserts that it is only the BBCS Family Day Care Center that is involved in the pending SERB proceeding, that day care is a financially independent component of BBCS, and that the day care center's revenues are substantially less than the revenue set forth in BBCS's petition for Advisory Opinion. In these circumstances, where the relevant jurisdictional facts appear to be disputed, we are simply unable in this Advisory Opinion proceeding to make a meaningful jurisdictional determination. See *American Lung Assn.*, 296 NLRB 12 (1989), and *Meat Cutters Local 576 (Market Basket Food)*, 230 NLRB 992 (1977).²

Accordingly, the petition for Advisory Opinion is dismissed.

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

² The Board's advisory opinion proceedings are not designed to resolve disputed issues of material fact. Thus, the pertinent portions of the Board's Rules do not provide for a hearing where interested parties would have the opportunity to introduce evidence and, to examine and cross-examine witnesses. By contrast, if an employer files a petition under Sec. 9(c)(1)(B) of the Act "alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a)," and if the Board has reasonable cause to believe that a question concerning representation exists, the statute requires the Board to "provide for an appropriate hearing upon due notice." See generally *Angelica Healthcare Services Group*, 315 NLRB 1320 (1995).