

**Austin J. DeCoster, d/b/a DeCoster Egg Farms, L&L Cleaning, Inc., Maine Contract Farming, Northern Transportation, LLC, PFS Loading, Inc., and Turner Maintenance and Services, Inc. and United Paperworkers International Union and Maine Labor Relations Board, Petitioner.** Case AO-347

February 4, 1998

ORDER DENYING PETITION FOR  
ADVISORY OPINION

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

Pursuant to Sections 102.98 and 102.99 of the Board's Rules and Regulations, on December 29, 1997, the Maine Labor Relations Board (MLRB) filed a petition for an Advisory Opinion as to whether the Board would decline to assert jurisdiction over Austin J. DeCoster, d/b/a DeCoster Egg Farms, L&L Cleaning, Inc., Maine Contract Farming, Northern Transportation, LLC, PFS Loading, Inc., and Turner Maintenance and Services, Inc. (the Employers), on the ground that their employees are "agricultural laborers" within the meaning of Section 2(3) of the National Labor Relations Act. In pertinent part, the petition alleges as follows:

1. A proceeding (Docket No. 98-7) is currently pending before the MLRB in which the United Paperworkers International Union (the Union) has charged the Employers, as an alleged single-integrated enterprise, with engaging in certain prohibited practices under the Maine Agricultural Employees Labor Relations Act, 26 M.R.S.A. ch. 16. Several of the Employers, L&L Cleaning, Inc., Northern Transportation, LLC, and Turner Maintenance and Services, Inc., have interposed as defenses in that proceeding that the complaint is preempted by the National Labor Relations Act and that the MLRB is without jurisdiction.

2. The general nature of the Employers' business is as follows: Austin J. DeCoster d/b/a DeCoster Egg Farms owns all the land and buildings that formerly constituted the premises of DeCoster Egg Farms. L&L Cleaning, Inc. engages in the business of industrial cleaning. Maine Contract Farming operates the hen houses, hatchery, feed mill, and the sanitation department of the former DeCoster Egg Farms. Northern Transportation, LLC engages in the business of transportation and trucking services. Turner Maintenance and Services, Inc. engages in the business of vehicle repair and maintenance and property upkeep. The MLRB has no information concerning the nature of the business conducted by PFS Loading, Inc.

In its petition, the MLRB states that it has no evidence concerning the commerce operations of the several Employers and has not made any findings in the proceeding. Due to the number of employers involved and the nature of their alleged business relationships,

the MLRB requests that the Board conduct an evidentiary proceeding to determine whether any of the employees at issue are exempt from the Board's jurisdiction as agricultural employees. The MLRB asserts that a hearing would help clarify the business relationships among the various employers and identify the actual employer or employers of the employees. The MLRB asserts that the record developed through such a proceeding could also be used by the MLRB in making its own jurisdictional determination, if any of the employees at issue are determined to be agricultural employees by the Board, thereby avoiding duplication of effort by the parties.

On January 13, 1998, Austin J. DeCoster d/b/a DeCoster Egg Farms filed a response to the MLRB's petition.

Having duly considered the matter,<sup>1</sup> we deny the MLRB's petition for an Advisory Opinion. The Board's Advisory Opinion proceedings are not designed to resolve disputed issues of fact. *Brooklyn Bureau of Community Service*, 320 NLRB 1148 fn. 2 (1996).<sup>2</sup> Thus, Section 101.39 of the Board's Rules and Regulations, as amended 61 FR 65189 (Dec. 11, 1996), specifically provides that a petition for Advisory Opinion may only be filed if the relevant facts are undisputed or the agency or court has already made the relevant factual findings. See also Section 102.99 of the Board's Rules (providing that the petition shall allege the findings of the agency or court or, in the absence of findings, a statement of the evidence relating to the jurisdictional question).<sup>3</sup>

Here, as indicated above, the MLRB asserts that it has not received any evidence or made any factual findings regarding the jurisdictional issue. Further, the response filed by Austin J. DeCoster d/b/a DeCoster Egg Farms also does not set forth any facts and, moreover, denies various factual allegations made by the Union in the state proceeding regarding the relationship between the Employers. Thus, it is clear that the petition fails to satisfy the requirements of the Board's Rules, and must be dismissed.

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

<sup>2</sup>Compare Secs. 9(c)(1) and 10(b) of the National Labor Relations Act, which provide for the conduct of hearings in representation and unfair labor practice proceedings, respectively. We have been administratively advised that there are no representation or unfair labor practice proceedings involving these parties currently pending before the NLRB.

<sup>3</sup>For cases where the Board has issued an Advisory Opinion based on facts which were either undisputed or previously determined by the state agency, or court. See *Correctional Medical Systems*, 299 NLRB 654 (1990); *University of Vermont*, 297 NLRB 291 (1989); and *St. Paul Ramsey Medical Center*, 291 NLRB 755 (1988).