

30 Sutton Place Corporation and Local 32B-32J, Service Employees International Union, AFL-CIO, Petitioner. Case 2-RC-17914

February 15, 1979

DECISION ON REVIEW AND DIRECTION OF ELECTION

BY CHAIRMAN FANNING AND MEMBERS MURPHY AND TRUESDALE

On April 21, 1978, the Regional Director for Region 2 issued her Decision and Order dismissing the petition in the above-entitled proceeding. The Regional Director declined to assert jurisdiction over the Employer, a residential cooperative, citing *Point East Condominium Owners Association, Inc.*, 193 NLRB 6 (1971), wherein the Board declined to assert jurisdiction over a residential condominium. The Regional Director found dispositive the fact that the cooperative, like the condominium in *Point East*, was a "collective instrumentality" devoted to property maintenance, rather than a "business" engaged in commercial activities.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a request for review of this finding. The Employer, in agreement with the Petitioner, contended that the Board had jurisdiction in this case. It cited the joint stipulation of the Employer and the Petitioner that the Employer is engaged in interstate commerce within the meaning of the Act. The Employer further asserted that the cooperative and condominium housing industry should be covered by the Board's \$500,000 gross annual revenue jurisdictional standard as applied to the apartment house industry in *Karl Gerber, Max Taetle, Nathan Metz & Estate of Bernard Katz, Co-Partners d/b/a Parkview Gardens*, 166 NLRB 697 (1967).

By telegraphic order dated July 27, 1978, the Board granted the Employer's request for review.

The Board has considered the entire record in this case with respect to the issue under review, including the document supporting the Employer's position filed by the Realty Advisory Board on Labor Relations, Incorporated,¹ and makes the following findings:

The Employer, 30 Sutton Place Corporation, is a

¹ The Realty Advisory Board on Labor Relations, Incorporated (RAB), is a multiemployer bargaining association which represents apartment buildings and office buildings in the city of New York. Of the approximately 1,700 apartment buildings represented by RAB, 475 are cooperative or condominium buildings.

business corporation under the laws of the State of New York. It owns and manages a residential cooperative apartment building located at 30 Sutton Place, New York, New York.

The Petitioner, Local 32B-32J, Service Employees International Union, AFL-CIO, seeks to represent all full-time and regular part-time doormen, elevator operators, porters, handymen, and other building service employees employed by the Employer.

As established by the Employer's articles of incorporation, stock is allocated in blocks to the building's apartments. Those who purchase the stock are entitled to a proprietary lease to the apartment to which the stock has been allocated. There are 46 apartments presently occupied by the stockholders of the Employer-corporation. In addition, the record indicates that the Employer-corporation rents one apartment. The expense of maintaining the 46 apartment units and the cooperative apartment building as a whole is shared proportionately by the individual stockholders.

A board of directors manages the affairs of the Employer-corporation. The Employer's gross income for the calendar year ending December 31, 1977, exceeded \$500,000. This amount derived primarily from tenant-stockholder assessments together with minor income from rent and storage fees. Almost all of the Employer's gross income was expended in managing the apartment building. These expenditures included approximately \$183,000 for payroll, \$59,000 in mortgage interest payments to Dry Dock Savings Bank of New York, \$58,000 in steam, electricity, and gas payments to Consolidated Edison Company of New York, \$51,000 for maintenance services and supplies (hardware, waterproofing and scaffolding materials, uniforms, and telephone), and \$13,000 in insurance payments to Atlantic Mutual Insurance Company, Blue Cross and Blue Shield, and First Rehabilitation Insurance Company of America.

In *Point East, supra*, issued in 1971, the Board declined to assert jurisdiction over a residential condominium. In this case the Employer and the Petitioner both urge us to assert jurisdiction over condominiums and cooperatives, applying our apartment house standard. They point to the recent accelerated growth of condominiums and the prominent place of both condominiums and cooperatives in the housing resources of the Nation. For the following reasons, we are persuaded that cooperatives and condominiums are engaged in the business of concerted home management and maintenance. Furthermore, we are persuaded that this business has a substantial impact on interstate commerce, warranting our assertion of jurisdiction² so that employees of coopera-

tives and condominiums, and these entities themselves when acting as employers, may invoke the rights and privileges of the Act.

In their stipulations entered in lieu of record, the Employer and the Petitioner cite the *HUD Condominium/Cooperative Study* of 1975, an exhaustive collection of data and analysis prepared by the Secretary of Housing and Urban Development in response to congressional directive. This study reveals that: approximately 4 million Americans now live in 1.69 million cooperative and condominium housing units across the Nation; in 1973 and 1974 condominiums represented one-quarter of the new housing starts in the United States; some urban areas have been significant conversions from rental properties to condominiums or cooperatives, with condominium conversion being most intense along the eastern seaboard between Boston and Washington; and while cooperative ownership generally declined in popularity during the early 1970's, this form of residence continues to be a significant factor in major urban areas, notably the New York City metropolitan area, where cooperatives have long been a feature of the housing market.³

Today's cooperatives and condominiums are involved in commercial activity on a large scale. Although they may vary in size and in the types of services offered to occupants, many provide such amenities as reception and answering services, 24-hour security and valet services, laundry and storage space, covered parking areas, medical facilities and day-care centers, swimming pools, tennis courts, golf courses, saunas, playgrounds, and function and recreation rooms.⁴ Thus a typical enterprise may hire more than a score of employees, who perform a variety of functions. For these employees, the cooperative or condominium must meet a payroll which may include tax, insurance, and workmen's compensation payments. The enterprise will also typically purchase maintenance supplies and energy for heating and cooling and make payments covering mortgage costs, sewage and water fees, and real estate taxes. Sometimes the cooperative or condominium hires an agent to manage the property or contracts out certain maintenance and support tasks, thereby utilizing outside profitmaking enterprises. All these activities indicate that cooperatives and condominiums are engaged in the business of concerted home

management and maintenance. Furthermore, this business impacts on interstate commerce, for it is dependent upon the free flow of supplies and labor and in this sense necessarily involves other institutions which operate in interstate commerce.

As indicated above, we now find that, unlike individual homeowners, present-day condominiums and cooperatives, consisting of numerous owners acting in concert to manage and maintain their collective properties, are engaged in business having a significant impact on interstate commerce.⁵ Accordingly, condominiums and cooperatives fall within the Act's jurisdictional mandate.⁶ However, we believe that it will effectuate the policies of the Act to limit assertion of jurisdiction to those enterprises which realize at least \$500,000 in gross revenue per annum.⁷ Our experience with retail operations, the hotel and motel industry, and the apartment house industry indicates that such a standard guarantees jurisdiction over those enterprises which have a substantial impact on interstate commerce. At the same time this standard does not involve the Board in cases of little economic import. Moreover, the minimum \$500,000 gross annual revenue standard provides predictability and ease to employers, employees, labor organizations, and the Board alike.

As indicated previously, 30 Sutton Place Corporation has a gross annual revenue in excess of \$500,000. Substantial portions of this sum are used to cover energy costs, mortgage payments, maintenance ser-

³ We note that our jurisdiction is warranted whether or not condominium and cooperative enterprises are viewed as commercial activity in the generally accepted sense. For in recent years the Board has held that day-care and geriatric centers, private colleges, educational television stations, and didactic recreational enterprises are all subject to the Board's jurisdictional mandate. As in those cases, the basis for our jurisdiction here derives from the general impact on interstate commerce of the enterprise (here, a residential cooperative or condominium) rather than involvement in traditional commercial activity. See, generally, *Salt & Pepper Nursery School & Kindergarten No. 2*, 222 NLRB 1295 (1976) (day-care center); *Drexel Home, Inc.*, 182 NLRB 1045 (1970) (geriatric center); *Cornell University*, 183 NLRB 329 (1970) (private college); *Viewer Sponsored Television Foundation, Inc., d/b/a KLSI-TV*, 217 NLRB 419 (1975) (educational television station); *The Colonial Williamsburg Foundation*, 224 NLRB 718 (1976) (didactic recreational enterprise).

⁶ The exclusion of domestic employees from the Act's jurisdiction (See, 2(2)) does not preclude our assertion of jurisdiction in this case. For there is a substantial difference between employment by a single homeowner and employment by a cooperative or condominium entity. In the first instance, an individual and personal relationship is created between the homeowner and the employee; in the second instance, the employee's relationship with the employer, the cooperative or condominium entity, is no different from that of an employee performing similar work for an apartment house or office building entrepreneur. "Domestic service implies employment on an individual and personal basis and cannot be enlarged to include a maintenance crew or a clerical staff for a [47] unit housing complex." *Success Apartments, Inc. v. UAW, Local 376*, 99 LRRM 3169, 3171 (Conn. Sup. Ct., 1978).

In *Leisure Village Association, Inc.*, 236 NLRB 102 (1978), the Board declined to issue an advisory opinion on the issue of the assertion of Board jurisdiction over a condominium. The Board cited *Point East*, *supra*, but indicated in fn. 3 the circumstances which led to that holding. In any event, to the extent that *Point East* is inconsistent with our decision in this case, it is hereby overruled.

² In this respect, we note the irrelevance of the legal differences between cooperatives and condominiums. Our concern is with the impact on interstate commerce of the activity of concerted home management and maintenance, which activity is undertaken by cooperatives and condominiums alike.

³ See *HUD Condominium/Cooperative Study*, *supra*, v. 1, 1, 7, 111, 10, 111, 11.

⁴ See *HUD Condominium/Cooperative Study*, *supra*, vol. 1, 111, 29.

vices and supplies, and insurance—expenditures largely involving entities in interstate commerce. Accordingly, we find that the Employer's operations affect commerce within the meaning of Section 2(6) and (7) of the Act, and as the Employer's annual gross revenues exceed \$500,000, we find that it will effectuate the policies of the Act to assert jurisdiction herein.

The labor organization involved is a labor organization within the meaning of Section 2(5) of the Act, as stipulated by the parties at the hearing. This labor organization claims to represent certain employees of the Employer.

A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

We find that the following employees of the Employer, as stipulated by the parties at the hearing, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time doormen, elevator operators, porters, handymen and other building service employees employed by the Employer at its 30 Sutton Place, New York, New York, location, excluding superintendent, office clerical employees, guards, watchmen, professional employees, and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]