

Carol Management Corporation, and/or Forest Hill Apartments, Inc., and/or Forest Hill Manor, Inc., and/or Forest Hill Terrace, Inc., and/or 71 Belleville Avenue, Inc.¹ and Local 734, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO, Petitioner. Case No. 22-RC-838. October 17, 1961

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, hearings were held before Arthur A. Greenstein, Alfred J. Hill, and James F. Morton, hearing officers. The hearing officers' rulings made at the hearings are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. Carol Management Corporation, a New York corporation, manages various residential and commercial properties in New York, New Jersey, and Connecticut. Petitioner seeks to represent certain employees of the Employer working at three residential projects and at an adjoining shopping center in Bloomfield, New Jersey.² The Employer contends that the Board does not have legal jurisdiction over its operations and that, in any event, the Board should not assert jurisdiction in this case.

The Employer is a multistate enterprise engaged in business activities in New York, New Jersey, and Connecticut. In 1959, the Employer made purchases of goods and services in an amount in excess of \$180,000 from firms located outside the State in which such goods and services were used by the Employer, and the Employer transferred cash and credits across State lines in excess of \$2½ million. On the basis of the foregoing, we find that the Board has statutory jurisdiction over the Employer's operations.³

The question remains whether the Board should assert jurisdiction over the Employer. The Employer is engaged primarily in the ownership and management of residential properties. At the present time,

¹ The name of the Employer appears as amended at the hearing.

² These properties are owned by Forest Hill Manor, Inc., Forest Hill Terrace, Inc., Forest Hill Apartments, Inc., and 71 Belleville Avenue, Inc. Carol, as well as the owner corporations of the properties it manages, are separately incorporated. However, all these corporations are owned either directly or indirectly by the same individual; they have the same officers, directors, and the same home office, and the labor policy for these corporations is determined by the same individuals. In view of these facts, we find that these corporations are a single employer for jurisdictional and other purposes (*Gibbs Oil Company and Henry and Paul Gibbs d/b/a Boulder Transportation Company*, 120 NLRB 1783). Carol Management and the owner corporations are sometimes referred to herein as the Employer.

³ *C. L. Morris, Inc., subsidiary of J. B. Liebman and Company, Inc.*, 127 NLRB 761; *Chain Service Restaurant, Luncheonette & Soda Fountain Employees, Local 11, AFL-CIO*, 132 NLRB 960; *The Connecticut Bank and Trust Company*, 114 NLRB 1293.

the Board has no discretionary jurisdictional standard covering employers engaged exclusively in such an operation.⁴ However, where, as here, the Employer's total operations are diversified, we shall, as heretofore, consider the totality of the operations to determine whether, in the circumstances, any portion of the Employer's operations meets the Board's presently applicable discretionary standards for assertion of jurisdiction.⁵

We shall first direct ourselves to the shopping center aspect of the Employer's operations. In addition to the shopping center already mentioned, the Employer owns and operates five shopping centers in New York. While the Board has had no occasion to assert jurisdiction over employers engaged solely in the operation of shopping centers, we did indicate in *Mistletoe Operating Company*,⁶ that we assert jurisdiction over employers engaged in operating office buildings on the ground that disputes involving such employers affect commerce "because they interfere, or tend to interfere, with the conduct of the interstate commerce activities carried on within the buildings." We believe that this rationale is equally applicable to the employers engaged in the operation of shopping centers, as a labor dispute involving employees of the operator of a shopping center would interfere with the interstate commercial activities of those tenants of the shopping centers which are engaged in commerce.⁷ We shall therefore apply the office building standard to employers engaged in the operation of shopping centers and assert jurisdiction over employers engaged in the management and operation, whether as owners, lessors, or contract managers, of shopping centers, if their gross annual revenue from such shopping centers amounts to \$100,000, of which \$25,000 is derived from organizations whose operations meet any of the Board's jurisdictional standard exclusive of the indirect outflow or indirect inflow standards as stated in *Siemons Mailing Company*, *supra*. According to the stipulation of the parties, the Employer derived in excess of \$100,000 during 1959 from such operations, of which

⁴ The Board, however, has asserted jurisdiction over an employer operating a residential housing project where such activity affected national defense (*Western Area Housing Company*, 107 NLRB 1263), or where the residential operations were an integral part of the employer's commercial operations (*Kennecott Copper Corporation*, 99 NLRB 748, 751), or where the residential apartments involved were located in the District of Columbia (*The Westchester Corporation*, 124 NLRB 194)

⁵ *Siemons Mailing Service*, 122 NLRB 81, 84. Thus, in *Claiborne Towers, Inc., and Governor Claiborne Apartments, Inc.*, 126 NLRB 187, where the employer operated buildings, of which a portion was used as residential apartments and another portion was used for office and commercial purposes, the Board asserted jurisdiction over the employer on the basis of the office building standard. See, also, *The T. H. Rodgers Lumber Company*, 117 NLRB 1732, 1734-1735.

⁶ 122 NLRB 1534

⁷ Cf. *East Newark Realty Corporation*, 115 NLRB 483. While not asserting jurisdiction in that particular case as the employer involved failed to meet the then applicable office building standard laid down in *McKinney Avenue Realty Company (City National Bank)*, 110 NLRB 547, the Board stated that it would apply the office building standard to an employer engaged in owning and leasing industrial floor space to tenants

\$25,000 was derived from employers engaged in commerce on the basis of a standard other than an indirect standard.⁸ We find, therefore, that the Employer's shopping center operations meet the Board's office building standard for assertion of jurisdiction.

In addition, the Employer owns and operates the 70 Park Avenue Hotel, from which it derived a total revenue of \$428,902 during 1959, and it owns the Belmont Plaza Hotel, which it leases to the Pick Hotel chain for an annual rental of \$332,750. Neither the 70 Park Avenue Hotel nor the Belmont Plaza Hotel is a permanent or residential hotel as these terms are defined in *Floridan Hotel of Tampa, Inc.*⁹ As the Employer also derived more than \$500,000 during 1959 from its hotel operations, we find that the Employer also meets the hotel standard for assertion of jurisdiction.¹⁰

In view of all the foregoing, we find that it will effectuate the policies of the Act to assert jurisdiction over the Employer.¹¹

2. The labor organizations involved claim to represent certain employees of the Employer.¹²

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

4. The parties are agreed that the appropriate unit should consist of all full- and part-time employees at the Employer's Bloomfield properties, including handymen, porters, and maintenance employees and their helpers, except that they disagree as to whether certain gardening employees should be included in the unit. Contrary to the Petitioner and the Intervenor, the Employer would exclude these gardening employees from the unit as seasonal employees. The gardeners are engaged in doing landscaping work. They are hired in April and work until October each year. They have the same super-

⁸ During 1959, the Employer derived the following amounts from tenants of its shopping centers: New York Telephone Company, \$31,891, H C Bohack Co., Inc., \$11,100, and Great Atlantic & Pacific Tea Company, \$7,800. H C Bohack Co., Inc. is a retail food chain which had a gross revenue during 1959 exceeding \$100 million. The Board has, on previous occasions, asserted jurisdiction over New York Telephone Company (*New York Telephone Co.*, 109 NLRB 788) and Great Atlantic & Pacific Tea Company (*The Great Atlantic & Pacific Tea Company, Inc.*, 126 NLRB 820, 824).

⁹ 124 NLRB 261

¹⁰ *Floridan Hotel of Tampa, Inc.*, *supra*. We do not consider it material that the Belmont Plaza Hotel is operated by the Pick Hotel chain and not by the Employer, since, in any event, a labor dispute involving the employees of the Employer would, at least indirectly, affect the operations of the Belmont Plaza Hotel and thus affect interstate commerce. In this connection, we note that the Pick Hotel chain derived in excess of \$1½ million during 1960 from its operation of the Belmont Plaza Hotel, and, on this basis, the Board would assert jurisdiction over the Belmont Plaza Hotel.

¹¹ While we are applying existing standards in asserting jurisdiction over the Employer in the absence of a specific standard relating to operators of residential properties, we leave open the question whether the Board should establish a specific standard covering such operations, and, if so, what standard should be adopted. See *Atlas Roofing Co., Inc.*, 131 NLRB 1267, footnote 7; see, also, *El Paso Country Club, Inc.*, 132 NLRB 942, footnote 4.

¹² Local 389, Building Service Employees International Union, AFL-CIO, intervened at the hearing on the basis of a card showing of interest.

vision as the other employees. The gardeners receive \$7.50 less per week than other employees and work 44 hours per week, the same number of hours as porters but 4 hours less than handymen. The gardeners are not told when they are hired that they are temporary employees. Although only one employee who worked previously as a gardener is currently working for the Employer, it appears that if a gardener is competent the Employer seeks to retain him as a permanent employee. The Employer makes no attempt to recall gardeners who worked during previous summers, but recruits a number of gardeners from the State of New Jersey's employment office and a number are recruited on the basis of recommendations of other employees. There is a large turnover among gardeners during the summer season, but this turnover is no greater than the turnover among porters and handymen during the entire year.

On the basis of the foregoing, we find that the gardening employees have sufficient interest in employment conditions to warrant their inclusion in the unit. We rely particularly on the fact that the position of gardener recurs each season, the gardeners are recruited each year from the same labor force, and they work under essentially the same conditions and supervision as the year-round employees.¹³

We find that all full- and regular part-time employees of the Employer employed at the Employer's residential apartments and shopping center in Bloomfield, New Jersey, including handymen, porters, gardeners and landscaping employees, maintenance employees and their helpers, but excluding office clerical employees, guards, and supervisors as defined in the Act, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS took no part in the consideration of the above Decision and Direction of Election.

¹³ See *Knouse Foods Co-operative, Inc.*, 131 NLRB 801.

The Carborundum Company¹ and International Union, United Plant Guard Workers of America (Ind.), Petitioner. Case No. 3-RC-2588. October 17, 1961

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Norman Goldfarb,

¹ The name of the Employer appears as amended at the hearing.