Forestam Realty Corporation d/b/a Riverside Manor Home for Adults<sup>1</sup> Employer-Petitioner and Local 1115, Nursing Home, Hospital, Senior Citizens Hotel Union<sup>2</sup> and New York Hotel and Motel Trades Council, AFL-CIO<sup>3</sup> Case 2-RM-1583

March 22, 1971

## DECISION AND DIRECTION OF **ELECTION**

BY MEMBERS FANNING, BROWN, AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hearings were held before Hearing Officers Jo Ann Ferdinand and Thomas Trunkes, Hearing Officers of the National Labor Relations Board. Following the hearings and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the case was transferred to the Board for decision. Briefs have been filed by the Employer-Petitioner, hereinafter called the Employer, Local 1115, Nursing Home, Hospital, Senior Citizens Hotel Union, hereinafter called Local 1115, and New York Hotel and Motel Trades Council, AFL-CIO, hereinafter called Trades Council.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its power in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officers' rulings made at the hearings and finds that they are free from prejudicial error. They are hereby affirmed.

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

1. The Employer is organized under the business corporate laws of the State of New York and licensed and regulated by the New York State Department of Social Welfare to operate, as a partnership, a 256-bed "private proprietary home for adults." Its purpose, as set forth by its licensing authority, is to provide sheltered protection and supervised environment to the elderly and infirm who, because of stabilized chronic disorders or disabilities, are incapable of living independently in a boarding home, yet do not require the services provided in a nursing home. In pursuit of this purpose, the Employer offers to residents who ages average between 70 and 80 years a myraid of personal-care services designed to help them with their daily needs; such services, for example, as assistance in eating, bathing, dressing, and walking. It also provides, through the intermediary of an occupational therapist, a varied program of social activities. It does not provide any medical or nursing care services beyond administering dosages of medication prescribed by its residents' personal physicians.

The Employer does not admit or cater to transient guests. Its residents are admitted by the Employer upon approval of their applications for admission, and at least 90 percent of them remain with the Employer for periods exceeding a month. The remaining 10 percent stay either "for the duration," or else are transferred to a nursing home or other appropriate health-care facility because they are too ill to remain at the Employer. In addition, the vast majority of its residents apparently are able to afford the Employer's rates, which are charged on either a weekly or monthly basis, and the costs for such residents as may be indigent are borne by a state

Although the Employer has been engaged in its present operation since approximately the beginning of March or April 1969, its direct and indirect purchases of goods and supplies from outside the State for the remainder of the year have exceeded \$20,000. In addition, the record shows that its gross revenues during this same period have exceeded \$330,000, that at the current rate, if projected over a 1-year period, it would exceed a minimum gross volume of business of \$720,000, and that when the Employer is operating at full capacity, its projected gross revenues will exceed \$1,000,000 annually.

While not disputing that the Employer's involvement in interstate commerce sufficiently establishes the Board's statutory and discretionary jurisdiction, Trades Council argues, in substance and effect, that although the Employer designates itself as a private proprietary home for adults, it is nothing more than a residential hotel, albeit for senior citizens, and, therefore, is the type of operation over which the Board has declined, and should continue to decline, to assert jurisdiction. Moreover, Trades Council continues, the record does not justify the creation of a new jurisdictional standard for private proprietary homes for adults. We find no merit in these contentions.

The Employer's purpose, unlike that of a hotel, is to "protect and promote the health, safety, comfort, and general welfare" 4 of elderly persons who, because of stabilized chronic disorders or disabilities, are incapable of living independently in either a boarding home or a hotel, by providing them with sheltered protection and a supervised environment. It accomplishes this purpose pursuant to state regulations which do not pertain to hotels by providing, for example, housekeeping employees who, in addition to cleaning

The Employer-Petitioner's name appears as amended at the hearing <sup>2</sup> The name of this party appears as amended at the hearing.

<sup>3</sup> The name of this party appears as amended at the hearing

<sup>4</sup> Rules and Regulations Private Proprietary Homes for Adults, New York State Department of Social Welfare, November 1, 1965

and changing linens, shave, bathe, and dress its residents; dietary employees who not only set up and clean the dining room, but also serve, feed, or assist residents in eating; an occupational therapist charged with providing social activities geared to 70 to 80-year old people; a night aide whose sole function is to patrol the halls at night and make certain that the residents are safe and their needs attended to; and an administrator, not a hotel manager, to oversee the entire operation. Moreover, its menu is severely restricted, its food is prepared consonant with the general and specific diets required by its residents, the doors of its residents' rooms have no locks so that unhindered assistance may be given if needed, and, through the installation of handrails in bathrooms, hallramps, and similar changes, it has been physically altered from the motel, which it was formerly, to a premises geared to the protection and physical needs of the elderly.

These factors clearly are not incidental to hotel operations generally, or residential hotel operations specifically, and, in our view, establish that the Employer is not a residential hotel. They show, instead, that the Employer is a related facility within the meaning of the term "nursing home and related facility," and that its operation falls within the pruview of the type of facility over which we have heretofore asserted jurisdiction.

The Employer's direct and indirect purchases of goods and supplies affect commerce under the Act and bring its operation within the Board's statutory jurisdiction. In addition, inasmuch as its gross volume of business, projected on an annual basis, meets the Board's discretionary jurisdictional dollar-volume standard, we find that it will effectuate the policies of the Act to assert jurisdiction herein over the Employer's private proprietary home for adults.

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

3. While the parties agree as to the appropriateness of the unit described in the petition, Trades Council contends that its collective-bargaining agreement with the Employer's predecessor constitutes a bar to an election. Although the Employer did not specifically assume that agreement on purchasing the premises, Trades Council argues, in substance, that the Employer nevertheless has adopted, and therefore is bound by, that agreement which, it avers, is currently valid and operative, and, therefore, no question concerning representation exists. We do not agree.

The agreement upon which Trades Council predi-

cates its claim is a 4-year agreement effective as of June 1, 1966, between Trades Council and the Hotel Association of New York City, Inc. That agreement pertains to hotel operations and covers employees indigenous to such operations. The Employer's predecessor, a motel operator who also employed similar types of employees, became a party thereto on June 24, 1967. The Employer purchased the motel premises on March 28, 1968, and after securing the necessary licensing and making some necessary alterations in the premises, began its home for adults' operations in approximately March 1969. During this ll or 12-month interval, it continued to operate as a motel, utilizing its predecessor's manager and other employees in order to deter the possible vandalism a closed premises might incur as well as to defray expenses during the conversion period. Also during this period, the manager, on whom the Employer relied completely and who apparently ran the business with a free hand, complied with its predecessor's agreement by deducting and remitting dues to Trades Council and by making the contractually called for contributions to Trades Council's insurance, medical, and pension funds.

Meanwhile in January 1969, Local 1115 requested, and the Employer refused, recognition. In the following month, following a strike in which most, if not all, of the employees participated, Local 1115 and the Employer executed a recognition agreement. Although Local 1115 attempted to begin negotiations up until July 1, 1969, when the Employer filed the petition, the Employer delayed negotiations.

In February or March 1969, the Employer commenced its home for adults operation with newly hired employees, for by this time it appears that all of its predecessor's employees had left. On July 1, 1969, the Employer filed the petition herein. As of the time of the hearing, the Employer had a complement of 37 employees, 29 of whom are in the stipulated unit, as contrasted to 6 former employees who were covered by the agreement prior to the Employer's purchase of the premises. There is no evidence that any of its employees are members of Trades Council. In addition, virtually none of its employees is primarily engaged in duties normally associated with the hotel business, nor are their functional operations covered by the prior agreement.

Thus, it is clear not only that there has been a substantial change in the Employer's operation, the character and complement of the bargaining unit, and the categories of the employees' jobs and duties, 7 but

<sup>&</sup>lt;sup>5</sup> "Nursing homes and related facilities offer a wide range of services which include not only nursing and medical services, but also custosdial and personal care functions . " p 37, Nursing Homes and Related Facilities, Economic Effects Studies United States Department of Labor,

<sup>1969,</sup> citing in turn, Characteristics of Nursing Homes and Related Facilities PHS Publication 930 F-5, 1963

<sup>6</sup> Drexel Home, Inc 182 NLRB No 151

<sup>&</sup>lt;sup>7</sup> See Montgomery Ward & Co, Incorporated, 137 NLRB 346, 351

also that Local 1115 had a "substantial claim" within the purview of the *Deluxe* rule<sup>8</sup> and, as contended by Local 1115, was deterred earlier from filing a petition to establish its representative status in reliance upon the Employer's conduct.<sup>9</sup> Moreover, since the contract raised as a bar does not cover the categories of employees either previously represented by Trades Council or included in the petition, that contract cannot stand as a bar.<sup>10</sup> Accordingly, we find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.<sup>11</sup>

4. The parties have stipulated, and we find, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All employees employed by Forestam Realty Corporation d/b/a Riverdale Manor Home for Adults, located at 6355 Broadway, Bronx, New York, excluding professional employees, guards, watchmen and supervisors as defined in the Act. [Direction of Election omitted from publication.]<sup>12</sup>

Moreover, Trades Council adduced no evidence to support this position which, in any event, would amount to a premature extension of its contract with the Hotel Association and still would not constitute a bar *Deluxe Metal Furniture Company, supra* 1001.

12 In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them Excelsion Underwear Inc., 156 NLRB 1236, NLRB v. Wyman-Gordon Co., 394 U S 759 Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 2 within 7 days of the date of this Decision and Direction of Election The Regional Director shall make the list available to all parties to the election No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed

<sup>8</sup> Deluxe Metal Furniture Company, 121 NLRB 995, 998-999

<sup>&</sup>lt;sup>9</sup> Cf. Greenpoint Sleep Products, 128 NLRB 548, 549, Deluxe Metal Furniture Company, supra

<sup>10</sup> Yellow Cab, Inc., 131 NLRB 239.

<sup>11</sup> We find without merit Trades Council's further contention that the Employer's execution of a State Workmen's Compensation Disability form which contained the statement that it covered "All employees covered by the collective bargaining agreement between the ... Trades Council and the above named employer" itself constitutes a valid written collective-bargaining agreement between it and the Employer Cf Appalachian Shale Products Co, 121 NLRB 1160, 1163-64 Moreover, the mere execution of that form is insufficient to effectively establish the existance in the argument raised by Trades Council during the hearings to the effect that a bar exists because the contract under which the Employer allegedly is bound as a successor was opened under a wage reopener provision in August 1968, a contract "consummated" on January 12, 1969, and expiring in 1973, and, therefore, constitutes a new agreement which bars the petition. See Southwestern Portland Cement Company 126 NLRB 931