

Hudson Ridge Owners Corp. and Hudson Ridge Owners Corp., Debtor in Possession, and Omni Property Management Group, Inc., Joint Employers and Local 617, International Brotherhood of Teamsters, AFL-CIO. Case 22-CA-18579

April 13, 1994

DECISION AND SUPPLEMENTAL ORDER

BY MEMBERS STEPHENS, DEVANEY, AND
BROWNING

On June 30, 1993,¹ Administrative Law Judge Joel P. Biblowitz issued his attached initial decision in this proceeding, in which he found, *inter alia*, that the Respondents are joint employers, but that the record failed to establish that the operations of the Joint Employer Respondents met the statutory standard for the Board's assertion of jurisdiction over this proceeding. More specifically, the judge found that the record failed to establish that in the 12-month period preceding November 1992 the Respondents collectively purchased more than a *de minimis* amount of goods and services directly or indirectly from suppliers outside the State of New Jersey. Thus, in his initial decision the judge ultimately dismissed the complaint on the grounds that the evidence was insufficient to establish that the Respondents had been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The judge did find in his initial decision, however, that if jurisdiction had been established he would have concluded that the Respondents had violated Section 8(a)(5) and (1) of the Act as alleged in the complaint, by failing and refusing to execute the collective-bargaining agreement that the parties agreed to in 1992.

Both the General Counsel and the Charging Party filed exceptions, with supporting briefs, to the judge's finding that the record failed to establish the basis for the Board's assertion of statutory jurisdiction. In the alternative, they requested that if the Board agreed with the judge's finding on this jurisdictional issue then the case should be remanded to the judge for the purpose of reopening the record to adduce additional evidence on the jurisdictional issue.

The Respondents did not file any exceptions to the judge's initial decision, and did not file a response to the exceptions filed by the General Counsel and the Charging Party. Nor did the Respondents file an opposition to the General Counsel's and the Charging Party's alternative requests for a remand of the jurisdictional issue to the judge.

On September 30, the Board issued an Order Remanding the Proceeding to Administrative Law Judge for the purpose of reopening the record to receive ad-

ditional evidence on the above-described jurisdictional issue, and thereafter issuing a supplemental decision and recommended Order. In its Order Remanding, the Board noted that no exceptions had been filed to the judge's findings that the Respondents are joint employers and that if jurisdiction had been established the Respondents' failure and refusal to execute the agreed-upon collective-bargaining agreement would have been in violation of Section 8(a)(5) and (1) of the Act. The Board further noted that, consequently, the joint employer status of the Respondents and their failure and refusal to execute the agreed-upon collective-bargaining agreement were no longer at issue and, having thus been finally decided, those matters were not within the scope of the remand.

On December 3, the judge reopened the record pursuant to the September 30 Order Remanding. On December 17, the judge issued the attached supplemental decision, finding that the record now establishes that the operations of the Respondents meet the statutory standard for the Board's assertion of jurisdiction over this proceeding, and more specifically that the record establishes that in the 12-month period preceding November 1992 the Respondents purchased more than a *de minimis* amount of goods and services directly from suppliers outside the State of New Jersey.

Respondent Omni filed exceptions, with a supporting brief, to the judge's supplemental decision, and the General Counsel and the Charging Party filed answering briefs to Respondent Omni's exceptions.

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

The Board has considered the supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended supplemental Order as modified.

ORDER

The National Labor Relations Board adopts the December 17, 1993 recommended Order of the administrative law judge and orders that the Joint Employer Respondents, Hudson Ridge Owners Corp. and Hudson Ridge Owners Corp., Debtor in Possession, and Omni Property Management Group, Inc., North Bergen, New Jersey, their officers, agents, successors, and assigns,

²The judge's decisions contain two inadvertent errors, which do not affect our result. In the second paragraph of sec. III of the judge's initial decision, the reference to Goldberg should be to Shapiro. In the last sentence of the third paragraph of the judge's supplemental decision, the judge erroneously stated that Howard Horne testified (*inter alia*) that Respondent Omni purchased goods and services worth \$1000 from suppliers outside the State of New Jersey during the 12-month period preceding November 1992. Actually, the parties stipulated to this fact without testimony from Horne on this particular point.

¹All dates are 1993 unless otherwise stated.

shall take the action set forth in the Order as modified.³

1. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs.

“(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to determine any amounts due under the terms of this Order.”

2. Substitute the attached notice for that of the administrative law judge.

³We adopt, inter alia, the judge’s recommendation as part of his remedy that the Respondents be required to reimburse any employees for any loss of earnings or benefits they may have suffered as a result of the Respondents’ unlawful failure and refusal to execute the collective-bargaining agreement that the parties agreed to in 1992. Backpay for any such losses shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The judge inadvertently failed to include mention of this reimbursement aspect of his remedy in his notice to employees. We shall substitute a revised notice for that of the judge.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to sign a contract with Local 617, International Brotherhood of Teamsters, AFL-CIO (the Union), the collective-bargaining representative of certain of our employees, when all the terms of the contract have been agreed on.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request of the Union, execute the contract previously negotiated and agreed on with the Union.

WE WILL reimburse any employees, with interest, for any loss of earnings or benefits they may have suffered as a result of our failure and refusal to execute

the contract previously negotiated and agreed on with the Union.

HUDSON RIDGE OWNERS CORP. AND
HUDSON RIDGE OWNERS CORP., DEBT-
OR IN POSSESSION, AND OMNI PROP-
ERTY MANAGEMENT GROUP, INC., JOINT
EMPLOYERS

Bert Dice-Goldberg, Esq., for the General Counsel.
Thadeus R. Maciag, Esq. (Maciag & Northgrave), for Re-
spondent Hudson Ridge.

Donald Webb Dickson II, Esq., for Respondent Omni.
*David Grossman, Esq. (Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, P.C.)*, for the Charging
Party.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on May 10, 1993, in Newark, New Jersey. The complaint, which issued on November 9, 1992,¹ and was based on an unfair labor practice charge filed on July 22 by Local 617, International Brotherhood of Teamsters, AFL-CIO (the Union) alleges that Hudson Ridge Owners Corp. and Hudson Ridge Owners Corp., Debtor in Possession (Hudson), and Omni Property Management Group, Inc. (Omni), at times collectively called Respondent as they are alleged to be joint employers, violated Section 8(a)(1) and (5) because, since about January 28, Omni failed and refused to execute the agreement that Respondent and the Union had reached full agreement on.

FINDINGS OF FACT

I. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. JURISDICTION AND THE FACTS

Hudson is a New Jersey corporation engaged in the ownership and operation of a condominium complex located in North Bergen, New Jersey, the sole facility involved (the facility). Omni, also located in New Jersey, is a corporation which is a managing agent for residential properties in the State of New Jersey. Its connection with this matter is that it is the managing agent for Hudson for the facility. Hudson’s income comes from the maintenance payments of the facility’s apartment owners as well as the laundry receipts. The gross receipts of Hudson in 1991 was \$407,000; the gross receipts for 1992 were \$497,000.² Omni’s owner and sole shareholder, Howard Horne, testified that Omni’s gross business, at the time of the hearing, was about \$5000 a month; “at one point it was probably as much as \$12,000

¹Unless indicated otherwise, all dates are in 1992.

²The discrepancy between these figures is caused principally by the fact that Hudson operates on a calendar year and on a cash-flow basis, so that the date that the maintenance payments were received is when they were credited to Hudson’s account.

a month, but business is off in this economy.” Omni is the managing agent for two or three other residential properties in New Jersey in addition to the facility. As regards purchases from outside the State of New Jersey, Horne testified that fuel oil purchased for the facility from a New Jersey vendor amounts to between \$70,000 and \$80,000 a year.³ Jay Ferguson, who was employed at the facility between July 1990 and March 1993 as a porter, testified that he has observed some supplies being delivered to the facility by Columbus Distributors with a truck that had New York State license plates. In addition, when the facility replaced the carpeting in some of the “new units,” the carpeting was purchased from a New York company. No amount was given for the amount of these purchases. Horne testified that Omni, which has only two employees, purchased its office supplies from local retail stores in New Jersey.

As the managing agent for Hudson, Omni collects the maintenance payments paid monthly, holds the money in a trust account, pays the bills for the facility, and serves as a conduit for information from the facility’s board of directors to the facility’s employees. At least during early to mid-1992, the employees at the facility were paid by check entitled: “Omni Property Management Group, Inc. Hudson Ridge Trust Account.” Counsel for Respondent Hudson states that this bank account is a Hudson account with Hudson’s Federal identification number and that the payroll account also contains Hudson’s name and Federal identification number with Omni’s mailing address.

Harold Petsch, vice president and business agent for the Union, was the Union’s representative responsible for negotiating a new collective-bargaining agreement to replace the one that expired June 30, 1991. The principal representing Respondent in these negotiations was Blake Kelly, vice president of Omni. On May 20, 1991, Petsch sent his initial contract proposals to Omni, and his initial meeting on July 30, 1991, was with Kelly. Between that time and October 1991, he had a number of phone conversations with Kelly about the new contract. In October he met at Omni’s office with Kelly, Horne, and Larry Shapiro, a principal officer of Hudson to discuss the new contract. All spoke at the meeting and (neither at this meeting nor at any other time) nobody proposed that the new contract be limited to Hudson. At this meeting, terms and conditions of employment, including wages and holidays, were discussed. On January 2, Kelly faxed him proposed modifications of the contract. Petsch testified that in a telephone conversation on January 17 he and Kelly reached agreement on a tentative agreement. Three or four days later, Petsch met with the employees at the facility and informed them of the agreement that he reached with Kelly; the employees voted to ratify the agreement. By letter to Kelly dated January 28, Petsch enclosed the contract “for your review. Please let me know your comments. Upon your approval we will make final contract and meet for signatures.” Having received no reply, Petsch called Kelly 2 weeks later and asked him if he had reviewed the contract

and he said that he had. Petsch asked him to sign it and return it to him, and he said that he would do so. On about April 13, Petsch again called Kelly and asked him to sign the contract and return it to him. He also asked Kelly when he was going to pay the employees the new higher rate of pay set forth in the new agreement and when he would pay the retroactive pay that was owed to the employees. Kelly told him that the following week the employees would receive the new rate of pay and retroactive pay; at about this time Kelly did as promised. During this conversation, Kelly asked Petsch to reduce the wage rate in the contract and the Employer would make up the difference in overtime. He stated that they were negotiating a bank loan and would have an easier time if the contract contained a lower wage rate. Petsch refused unless they agreed to put it in writing, so they dropped the proposal. In May, he again spoke to Kelly and asked him when he was going to return the signed agreement to him. Kelly said that he had given it to Horne for his signature and he was waiting for Horne to sign it. Petsch again spoke to Kelly on about June 29, asking him to return the signed agreement. Again, Kelly said that Horne had it on his desk and was going to sign it. When he did, Kelly would send it to him.

By letter dated September 4, counsel for Hudson mailed counsel for the Union a copy of the contract. The enclosed letter referred to two changes made in the contract: correcting the name of the ownership entity and deleting the managing agent as a party to the contract. The enclosed contract was signed by Horne. However, where the Employer (or Employers) were originally listed as “Owners of Hudson Ridge Condominiums and Omni Management Company,” this was crossed out on the cover and signature pages and replaced by “Hudson Ridge Owners Corp.” on the cover page, and “Hudson Ridge Owners Corp. By Omni Management Company, Agent for Employer,” on the signature page. As stated above, Petsch testified that at no time did Kelly, or anybody else, ask him to exclude Omni from the contract. The first time he was aware of that was when he received the signed, altered agreement from counsel for Hudson.

At the hearing, the complaint was amended to allege that George Affrey was a supervisor and agent of Respondent within the meaning of Section 2(11) and (13) of the Act. Affrey is the superintendent at the facility; the regular complement of employees at the facility has been three porters and two maintenance employees. Horne testified that Affrey “directly supervises” these employees. Ferguson testified that Affrey interviewed him, showed him around the facility, explained what had to be done, and hired him on the spot. Affrey receives calls from the tenants and distributes the work to the employees. He tells employees what their work schedule will be and occasionally he directs an employee to cover for an absent employee. On one of those occasions, a maintenance employee was absent for 3 months, Affrey told Ferguson to fill in for him until they found somebody else. In March 1993, Affrey’s gross weekly wages were \$693; the other employees’ wages ranged from \$290 to \$538. Ferguson was laid off in about March 1993; at that time, Affrey told him that Horne had called and said that they had to lay somebody off, they had to cut back. I find that the evidence establishes that Affrey was a supervisor within the meaning of Section 2(11) and (13) of the Act.

³ As to where this fuel oil came from, he testified:

Without a careful review of the books and records and a determination actually from the court as to whether or not fuel oil which is purchased from a New Jersey fuel oil vendor yet is picked up at a terminal in New York is out of state goods and services, I can’t comment as to whether or not there was \$5,000 worth of goods and services.

III. ANALYSIS

The initial issue here is whether Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The gross receipts of Hudson were \$407,000 and \$497,000 in calendar years 1991 and 1992. The discrepancy is caused by, among other things, the fact that the Company operates on a cash-flow basis and a slight delay in receiving monthly maintenance charges could make a difference in what year the receipts are credited to. It is clear, however, that Hudson's yearly gross does not reach the Board's jurisdictional standard of \$500,000. In order to satisfy this standard, the General Counsel must establish that Hudson and Omni (which grossed between \$100,000 and \$200,000 in management fees in 1991 and 1992) are joint employers.⁴

Based on these facts, I find that Hudson and Omni are joint employers of the employees at the facility. In *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1124 (3d Cir. 1982), the court stated: "Where two or more employers exert significant control over the same employees—where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment—they constitute 'joint employers' within the meaning of the NLRA." Although Hudson and Omni have separate ownership and control, I find that under the standard set forth above they constitute joint employers. Omni pays the employees from an account containing both Omni's and Hudson's names and Hudson's Federal identification number. In addition, Omni's control over the employees at the facility is illustrated by the fact that when Ferguson was laid off Affrey told him that Horne told him that somebody had to be laid off. The principal evidence of the sharing of responsibilities over the terms and conditions of employment for the employees at the facility comes from the contract negotiations and the resulting agreement. The principal negotiator for Respondent was Omni Vice President Kelly. With the exception of the October 28 meeting where Goldberg was present with Horne and Kelly, all Petsch's contacts were with Kelly. When he wanted to know when the employees would be paid the new rate of pay, Kelly told him. When Respondent wanted a change in the contract, Kelly asked him. And finally, the contract was signed by Horne. All this establishes that Omni significantly controls the employment of maintenance personnel at the facility, and is therefore a joint employer with Hudson of the employees at the facility.

⁴The General Counsel alleges that because Respondent failed to provide subpoenaed information regarding jurisdiction to the hearing he should be allowed to use secondary evidence under *Tropicana Products*, 122 NLRB 121 (1958), to prove jurisdiction here. I have some difficulty with this request. The full subpoena was not sent until May 5, 1993, and was received by Omni on May 6, 1993, two business days before the commencement of the hearing. As stated above, Omni is a two-person operation. Horne testified that the subpoenaed documents were in the possession of his accountant who was not available when the subpoena was received. At the hearing, Horne offered to open its records to the General Counsel's inspection. I therefor find that Respondent did not refuse to supply the subpoenaed information, but rather, because of its situation, simply needed additional time to make the documents available. I offered the General Counsel the opportunity to adjourn the case to look over the subpoenaed documents, but this offer was refused. The General Counsel's request is therefore denied.

Having found that Hudson and Omni constitute joint employers, their gross revenues can be combined. 373-381 *South Broadway Associates*, 304 NLRB 1108 (1991). Hudson's gross revenues in 1991 and 1992 were \$407,000 and \$497,000, respectively. Omni's gross revenues during this period was between \$144,000 to about \$60,000 at about the time of the hearing. It is clear that during the events in question, in 1992, the gross revenue of Hudson and Omni exceeded \$500,000. 30 *Sutton Place Corp.*, 240 NLRB 752 (1979). The other requirement for the assertion of jurisdiction is that the entity's purchase of goods from outside the State be more than de minimis. *Mar Del Plata Condominium Assn.*, 282 NLRB 1012 (1987). As stated above, I have rejected the General Counsel's request that it be allowed to establish the Board's jurisdiction here through secondary evidence, Ferguson's testimony.⁵ The sole direct evidence establishing out-of-state purchases is a statement made by Horne at the hearing. He and counsel for Hudson arrived late for the hearing and, when I gave Horne an opportunity to state his position, prior to being sworn, he stated, inter alia:

Without a careful review of the books and records and a determination actually from the court as to whether or not fuel oil which is purchased from a New Jersey fuel oil vendor yet is picked up at a terminal in New York is out of state goods and services, I can't make a comment as to whether or not there was \$5000 worth of goods and services.

I find that this statement is not clear enough to constitute evidence that the fuel oil that Respondent purchased comes directly from outside the State of New Jersey. Rather it appears that it is just as likely that it was a theoretical statement of where the oil might come from. Further, I find that I cannot take official notice of the fact that there are presently no producing oil wells in the State of New Jersey as a means of finding Board jurisdiction here. It may be that Respondent purchases its oil from a dealer in New Jersey which then purchases it from a New Jersey refinery, which purchased it from outside the State of New Jersey. This would be double indirect and not sufficient to establish jurisdiction.

Finally, by letter dated May 6, 1993, counsel for Hudson wrote to counsel for the General Counsel. In addition to stating some jurisdictional facts, and stating, "this law firm does not presently represent Omni," the final paragraph states:

Finally, you asked if Omni would concede that it engages in interstate commerce, in order that you might withdraw your subpoena duces tecum. As I stated to you on the telephone, I believe Omni would readily stipulate to the fact that it has . . . purchased from time to time a nominal amount of supplies from out-of-state sources.

In a "Certification" presented by Horne when he arrived at the hearing here, he stated that counsel for the General Counsel requested that he stipulate that Omni's gross revenue exceeded \$500,000 and that it purchased goods and sup-

⁵It should be noted that even if I had allowed the use of secondary evidence here, Ferguson's testimony was insufficient to establish jurisdiction here.

plies valued in excess of \$5000 directly from points outside the State of New Jersey. He stated:

Omni is a *very small concern*. It currently employs only two persons and at its highest point probably only employed four. Omni's gross revenues have never even approached \$250,000, and, without records, it is hard to say if goods and supplies were purchased in that amount from outside of the state, but it is not likely, given that Omni does business solely in the State of New Jersey and purchases most of its supplies, which are such items as copy paper and computer ribbons at Staples and like retail outlets in New Jersey.

In Horne's sworn testimony, he repeated that Omni's office supplies are purchased at Staples and Office Max stores in New Jersey.

I find that the admission contained in the May 6, 1993 letter is insufficient to establish jurisdiction here. At the time of the letter, Counsel Maciag was not the attorney for Omni and he specifically said so in the letter. Also, the letter states that he believed that Omni would stipulate that it "purchased from time to time a nominal amount of supplies from out of state sources." Not only is this not a formal stipulation and less than definitive, but it is contradicted by the statements contained in Horne's testimony and his certification that all of Omni's office supplies are purchased at local stores in New Jersey.

On the basis of all the above evidence, I find that counsel for the General Counsel has failed to establish that Respondent has satisfied the Board's jurisdictional requirement that it purchase a de minimis amount of goods or supplies from outside the State. I therefore recommend that the complaint be dismissed.⁶

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.
2. Hudson and Omni constitute joint employers of the employees involved here.
3. The evidence is insufficient to establish that Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
4. Therefore, the complaint is dismissed.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

⁶I should state that had the jurisdictional requirements been met, the violation here was pretty obvious. Petsch's credible uncontradicted testimony established that he had reached agreement with Kelly on all the terms of a new agreement, and that on a number of occasions Kelly reassured him that Horne would sign it. As I have found that Hudson and Omni are a joint employer, and Respondent has presented no defense to Omni's refusal to sign the agreement that it negotiated with the Union, this refusal would have violated Sec. 8(a)(1) and (5) of the Act.

⁷If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

It having been found that Respondent's operations does not satisfy the Board's jurisdictional requirements, the complaint is dismissed in its entirety.

Bert Dice-Goldberg, Esq., for the General Counsel.
Thomas Ludwig, Esq., for Respondent Omni.
David Grossman, Esq. (Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano, P.C.), for the Charging Party.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was originally heard by me on May 10, 1993. I issued a decision in the matter dated June 30, 1993, wherein I found that General Counsel had failed to establish that the operations of the joint employer Respondents satisfied the Board's jurisdictional requirement that the employer purchase a de minimis amount of goods or supplies from outside the State. I did find that the joint employer Respondents satisfied the Board's \$500,000 gross revenue standard and that if the General Counsel had established that the Board had jurisdiction herein, I would have found that the Respondents violated Section 8(a)(1) and (5) of the Act.

By Order Remanding Proceeding to Administrative Law Judge, dated September 30, 1993, the Board found that "the record is inconclusive on the issue of whether the operations of the joint employer Respondents meet the statutory standard for the Board's assertion of jurisdiction over this proceeding." The Board therefore remanded the case to me "to receive additional evidence on the issue of whether the joint employer Respondents meet the statutory standard for the Board's assertion of jurisdiction over this proceeding."

Pursuant to this remand, the hearing herein reopened on December 3, 1993. The sole testimony was provided by Howard Horne who, at the time of the events herein, was the owner and sole shareholder of Respondent Omni Property Management Group, Inc. which, at the time, was the managing agent for Hudson Ridge Owners Corp., which owned and operated a condominium complex in North Bergen, New Jersey. Horne testified that for the 12-month period preceding November 1992, the jurisdictional period herein, Respondent Hudson Ridge made purchases of in excess of \$5000 from suppliers outside the State of New Jersey, principally for elevator and burner service, and that for the same period, Respondent Omni purchased goods and services worth \$1000 from suppliers outside the State of New Jersey.

As I have previously found that Respondents Hudson Ridge and Omni constitute joint employers, their out-of-state purchases for the relevant period exceed \$6000, clearly more than the de minimis amount required by *Mar Del Plata Condominium Assn.*, 282 NLRB 1012 (1987). As I have also previously found that their combined gross revenue for the relevant period exceeds \$500,000, I find that the General Counsel has established that Respondents' operations satisfy the Board's jurisdictional standards. *30 Sutton Place Corp.*, 240 NLRB 752 (1979).

CONCLUSIONS OF LAW

1. Respondent Hudson Ridge and Respondent Omni constitute joint employers of the employees of the Respondents.

2. Respondents have been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Local 617, International Brotherhood of Teamsters, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

4. The following employees of Respondent 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 porters, maintenance men, utility and groundkeepers employed by Respondent at its North Bergen facility.

5. Since on about September 4, 1992, Respondents, have failed and refused to execute the collective-bargaining agreement previously agreed to by Respondents and the Union, although requested to do so by the Union since about January 1992, in violation of Section 8(a)(1) and (5) of the Act.

THE REMEDY

Having found that Respondents have violated the Act, I will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. As the sole violation is the failure and refusal to execute the agreed-upon collective-bargaining agreement, Respondents will be ordered to execute the agreement upon request of the Union. In addition, if any employee in the unit suffered a loss of earnings or any other benefits due to Respondents' refusal to execute the agreement, Respondents shall reimburse that employee for his losses.

On these findings of fact conclusions of law and the entire record, I issue the following recommended¹

¹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

ORDER

The Respondents, Hudson Ridge Owners Corp. and Hudson Ridge Owners Corp., Debtor in Possession and Omni Property Management Group, Inc., Joint Employers, shall

1. Cease and desist from

(a) Failing and refusing to execute collective-bargaining agreement on which the Union and Respondents had previously reached full agreement upon.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act.

(a) Upon request of the Union, execute the collective-bargaining agreement previously agreed on by the parties.

(b) Reimburse employees in the unit described above for any losses they may have suffered due to the Respondents' refusal to execute the collective-bargaining agreement herein.

(c) Post at the facilities in North Bergen, New Jersey, and Edgewater, New Jersey, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by Respondents' authorized representatives, shall be posted by the Respondents immediately on receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

adopted by the Board and all objections to them shall be deemed waived for all purposes.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."