

Lemle & Wolff, Inc., Petitioner and Local 32E Service Employees International Union, AFL-CIO

9 Sherman Associates and Lemle & Wolff, Inc., Petitioners and Local 32E Service Employees International Union, AFL-CIO. Cases AO-325 and 326

June 30, 1995

ADVISORY OPINION

BY MEMBERS BROWNING, COHEN, AND
TRUESDALE

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on June 12, 1995, Lemle & Wolff, Inc. (Lemle) and 9 Sherman Associates (Sherman), filed petitions for Advisory Opinions as to whether the Board would assert jurisdiction over their operations.¹ In pertinent part, the petition alleges as follows:

1. A proceeding, Case No. SU-58917-58921, is currently pending before the New York State Employment Relations Board (NYSERB) in which the Union claims that Lemle has refused to bargain with the Union, in violation of Section 704 of the New York State Labor Relations Act in a one-person unit at a 53-unit residential apartment building managed by Lemle located at 585 West 204th Street, New York, New York, and in a one-person unit at a rental building with 96 residential units and 3 commercial units owned by Sherman and managed by Lemle located at 9 Sherman Avenue, New York, New York.

2. Lemle is a New York corporation engaged in real estate management.

3. During the past calendar year Lemle purchased materials and services valued in excess of \$50,000 directly from outside the State of New York and had gross receipts in excess of \$1 million solely from the operation of residential buildings in the State of New York.

4. Lemle and Sherman are jointly controlled and directed by Frank Analante, the proprietor and general partner, respectively, of both organizations. Lemle supervises and directs the terms and conditions of employment at the building located at 9 Sherman Avenue, New York, New York, as well as the day-to-day activities of the single employee employed at that building.

¹ The petition in AO-325 was filed by Lemle. The petition in AO-326 was filed by both Lemle and Sherman.

5. The Union neither admits nor denies the aforesaid commerce data and the NYSERB has not made any findings with respect thereto.

6. There are no representation or unfair labor practice proceedings involving the Employers pending before the Board.

Although all parties were served with a copy of the petition for Advisory Opinions, no response was filed.

Having duly considered the matter,² we find that the Board would assert jurisdiction over the Employers. The Board has established a \$500,000 discretionary standard for asserting jurisdiction over residential buildings.³ As the petitions allege that Lemle's total annual income from residential buildings exceeds \$1 million, it is clear that Lemle satisfies the Board's discretionary standard.⁴ As the petitions further allege that Lemle's annual out-of-state purchases exceed \$50,000, Lemle also clearly satisfies the Board's statutory standard for asserting jurisdiction.⁵ Furthermore, assuming Sherman and Lemle are joint employers or a single employer with respect to the building located at 9 Sherman Avenue, New York, New York, it is clear that Sherman therefore also satisfies the Board's jurisdictional standards.⁶

Accordingly, the parties are advised that, based on the foregoing allegations and assumptions, the Board would assert jurisdiction over the Employer.⁷

² The Board has delegated its authority in this proceeding to a three-member panel.

³ See *Parkview Gardens*, 166 NLRB 697 (1967) (residential apartments); and *Imperial House Condominium*, 279 NLRB 1225 (1986), affd. 831 F.2d 999 (11th Cir. 1987) (condominiums and cooperatives).

⁴ The Board has traditionally aggregated the gross revenues derived from all residential buildings managed by an employer in determining whether the employer satisfies the Board's discretionary standard. See, e.g., *Mandel Management Co.*, 229 NLRB 1121 (1977). In so finding, we have assumed that the Employer is a single employer with respect to the operations included in its commerce data.

⁵ We also note that in a previous case, on the basis of similar facts, the Board advised that it would assert jurisdiction over Lemle at a different residential apartment building. *Lemle & Wolff*, 312 NLRB 138 (1993).

⁶ See *CID-Sam Management Corp.*, 315 NLRB 1256 (1995); *373-381 South Broadway Associates*, 304 NLRB 1108 (1991).

⁷ The Board's advisory opinion proceedings under Sec. 102.98(a) are designed primarily to determine whether an employer's operations meet the Board's "commerce" standards for asserting jurisdiction. Accordingly, the instant Advisory Opinion is not intended to express any view whether the Board would certify the Union as representative of the unit involved here under Sec. 9(c) of the Act. See generally Sec. 101.40 of the Board's Rules.