

**1151 Elder Associates, L.L.C. and Service Employees International Union, Local 32E, AFL-CIO.**  
Case AO-342

November 21, 1996

ADVISORY OPINION

BY MEMBERS BROWNING, FOX, AND HIGGINS

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on October 15, 1996, 1151 Elder Associates, L.L.C. (the Employer) filed a Petition for Advisory Opinion as to whether the Board would assert jurisdiction over its operations. In pertinent part, the petition alleges as follows:

1. A representation proceeding (Case SE-59226) and an unfair labor practice proceeding (Case SU-59209) are currently pending before the New York State Employment Relations Board (NYSERB) involving the Employer and Service Employees International Union, Local 32E, AFL-CIO (the Union).<sup>1</sup>

2. The Employer is engaged in the real estate business. The Employer is the managing agent of a residential apartment house located at 1151 Elder Avenue, Bronx, New York, which generates annual residential rental income in excess of \$267,000. The Employer's out-of-state oil purchases amounted to \$23,963 for the past year.

3. Eckstein Associates is also the managing agent of numerous residential apartment buildings, including 2961 Marion Avenue, Bronx, New York, owned by 2961 Marion Realty Associates, which generates in excess of \$500,000 in annual rental income,<sup>2</sup> and 733 Arnow Avenue, Bronx, New York, owned by 733 Arnow Avenue, L.L.C., which generates \$350,354 in annual rental income. The annual out-of-state purchases at these two buildings amounted to \$74,000 and \$28,139, respectively.

4. The Employer is unaware whether the Union admits or denies the aforesaid commerce data and the

<sup>1</sup> Although the Employer's petition only refers to the representation proceeding, the Employer subsequently filed a letter with the Board dated October 14, 1996, indicating that the Union had also filed an unfair labor practice charge against the Employer and Eckstein Associates.

<sup>2</sup> See *2961 Marion Realty Associates*, 322 NLRB 256 (1996).

NYSERB has not made any findings with respect thereto.

5. There are no representation or unfair labor practice proceedings involving the Employer pending before the Board.

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

Having duly considered the matter,<sup>3</sup> the Board is of the opinion that it would assert jurisdiction over the Employer. The Board has established a \$500,000 discretionary standard for asserting jurisdiction over residential apartment buildings.<sup>4</sup> Here, the petition indicates that the total annual rental income of the residential apartment buildings managed by the Employer and Eckstein Associates is well in excess of that amount. Thus, assuming the Employer and Eckstein Associates are a single or joint employer at the subject buildings,<sup>5</sup> the Employer clearly satisfies that standard.<sup>6</sup> As the petition further alleges that the Employer's out-of-state oil purchases were \$23,963 in the past year, the Employer also clearly satisfies the Board's statutory standard for asserting jurisdiction.

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

<sup>3</sup> The Board has delegated its authority in this proceeding to a three-member panel.

<sup>4</sup> See *Parkview Gardens*, 166 NLRB 697 (1967).

<sup>5</sup> The Employer's October 14 letter attaches a letter to the NYSERB dated the same day regarding the Union's unfair labor practice charge which at least suggests that the Employer and Eckstein Associates are one and the same. Indeed, the letter indicates that the instant petition for advisory opinion was filed by Eckstein Associates.

<sup>6</sup> It is well established that the commerce data of single or joint employers may be combined for jurisdictional purposes. See *Valentine Properties*, 319 NLRB 8 (1995), and cases cited there. Further, 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).

<sup>7</sup> 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 petitioned-for unit under Sec. 9(c) of the Act. See generally Sec. 101.40 of the Board's Rules.