

585 Associates and Lemle & Wolff, Inc. and Local 32E, Service Employees International Union, AFL-CIO. Case AO-343

December 11, 1996

ADVISORY OPINION

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on November 13, 1996, 585 Associates and Lemle & Wolff, Inc. (collectively, 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 proceeding, Case No. SE-59247, is currently pending before the New York State Employment Relations Board (State Board) in which the Union is seeking to certify a one-member unit at 585 West 204th Street, New York, New York (the building), a 53-unit residential apartment building managed by Lemle & Wolff (Lemle).

2. Petitioner 585 Associates (585) owns the building, and Petitioner Lemle is the managing agent of the building. Both 585 and Lemle, maintain their principal place of business at 5925 Broadway, Bronx, New York.

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

4. The Employer is unaware whether the Union admits or denies the aforesaid commerce data, and the State Board 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,¹ the Board is of the opinion that it would assert jurisdiction over the Employer. The Board has established different jurisdictional standards for residential and commercial buildings.² The petition states that the building is a residen-

tial building but fails to specify whether Lemle's income is derived exclusively from residential buildings or whether any portion of Lemle's income is from commercial properties.³ The Board normally analyzes each portion of a diversified real estate operation separately, but the Board has recognized an exception where the gross annual revenues from an employer's entire operations exceed \$1 million—the highest discretionary jurisdictional monetary standard the Board applies to any enterprise.⁴ Here as the petition clearly alleges that the gross income from Lemle's real estate management exceeds \$1 million, Lemle clearly satisfies this standard. In addition, as the petition also alleges that Lemle purchased over \$50,000 of materials or services from outside the State of New York, it also satisfies our statutory jurisdictional standards.⁵ Furthermore, assuming 585 and Lemle are joint employers or a single employer with respect to the building, it is clear that 585 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

999 (11th Cir. 1987) (establishing \$500,000 standard for residential apartments for condominiums and cooperatives, respectively) with *Mistletoe Operating Co.*, 122 NLRB 1534 (1959) (holding that jurisdiction will be asserted over commercial office buildings when the employer's gross annual revenue amounts to \$100,000, of which \$25,000 is derived from organizations whose operations meet any of the Board's standards exclusive of the indirect outflow or indirect inflow standards).

³The commerce data submitted does not indicate whether the gross revenues are derived exclusively from the operation of the building or whether they are an aggregate of revenues from all buildings owned or managed by the Employer. We have assumed that the Employer is a single employer or a joint employer with respect to the operations included in its commerce data.

⁴See *Phipps House Services*, 320 NLRB 876, 877 (1996); *135-45 West Kingsbridge Avenue Assoc.*, 300 NLRB 946 (1990); and *Mandel Management Corp.*, 248 NLRB 186 (1980).

⁵We also note that in previous cases, on the basis of similar facts, the Board advised that it would assert jurisdiction over Lemle at different residential apartment buildings. *Lemle & Wolff, Inc.*, 317 NLRB 1070 (1995), and *Lemle & Wolff, Inc.*, 312 NLRB 138 (1993).

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

⁷The 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.

¹The Board has delegated its authority in this proceeding to a three-member panel.

²Compare *Parkview Gardens*, 166 NLRB 697 (1967), and *Imperial House Condominium*, 279 NLRB 1225 (1986), *affd.* 831 F.2d