

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**PROPERTY MARKETS GROUP, INC. and
500 WEST END CONDOMINIUM ASSOCIATION**

Joint-Employers

and

Case No. 2-RC-22782

**NATIONAL ORGANIZATION OF INDUSTRIAL
TRADE UNIONS, NOITU, IUJAT, AFL-CIO**

Petitioner

LOCAL 32BJ, SEIU, AFL-CIO

Intervener

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before a Hearing Officer of the National Labor Relations Board, herein called the Board.

The petition herein as initially filed named only Property Markets Group, Inc.¹ (PMG) as the employer of the building service employees employed at 500 West End Avenue, New York. Thereafter, National Organization of Industrial Trade Unions, NOITU, IUJAT, AFL-CIO, the Petitioner herein, amended the petition to name 500 West End Condominium Association as a joint employer of the unit employees. After the conclusion of the hearing, by letter dated December 17, 2003, Local 32 BJ, SEIU, AFL-CIO moved to intervene in this matter. By

¹ The name appears as it does in 339 NLRB No. 31.

letter dated December 19, 2003, Regional Director Celeste J. Mattina approved Local 32BJ's motion to intervene in this matter.

At issue here is whether the employers satisfy the Board's requirements for the assertion of jurisdiction and whether Petitioner and Intervener are labor organizations within the meaning of the Act. Also at issue is whether the named Employers jointly supervise the unit employees.

Pursuant to the Notice of Hearing served on Property Markets Group, herein PMG, the hearing opened on December 9, 2003. PMG did not appear at the hearing. Petitioner moved at the hearing to amend its petition to name 500 West End Condominium Association, herein called West End, as a joint employer with PMG of the employees in the petitioned-for unit.

After testimony from an employee in the petitioned-for unit and from an organizer employed by Petitioner, the matter was adjourned to December 17. At the reopening of the hearing on December 17, Elliot Joseph appeared pursuant to subpoena. Mr. Joseph, president of West End, and an asset manager employed by PMG, indicated that he was not appearing as a representative of either West End or PMG, but was only present in response to a subpoena. Thus, neither Employer appeared at the hearing or took any positions on the issues raised at the hearing, despite receiving notice of the proceedings.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. 500 West End Condominium, a condominium association, is operated by a board of managers with Elliot Joseph serving as president. The condominium association provides all necessary services for the common areas of the facility and employs a staff to perform such services. It derives its income from common charges paid by the apartment unit owners. Joseph testified that the unit owners in the aggregate pay approximately \$800,000 per year to the association in fees for the maintenance of the property. The Association purchases electricity from Consolidated Edison of New York in amount of \$30,000 annually and fuel from Hess Oil in the amount of \$30,000. Based upon the record it appears that 500 West End is an employer within the meaning of Section 2(2), (6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

The Board has previously asserted jurisdiction over PMG. In *Property Markets Group, Inc.*, 339 NLRB No. 31 (2003), the Board affirmed the findings of the Administrative Law Judge who found that PMG derives gross revenues in excess of \$500,000 and purchases and receives goods in excess of \$5,000 at the various buildings it owns and/or manages. Based on the record, the ALJ found that PMG is an employer within the meaning of Section 2(2), (6) and (7) of the Act.

Long-term building service employee, Antoni W. Mlynarkiewicz, who is presently employed as a doorman, testified that for the last two years, he has

received a paycheck from 500 West End Condominium. Joseph testified that PMG is responsible for the day-to-day management of the building and is responsible for all hiring and firing decisions. Thus, based on this record, it appears that the condominium association employs and pays the unit employees, but these employees are supervised on a day-to-day basis by PMG, the managing agent which also decides who to hire and fire. In order to show that two entities are joint employers, it must be established that they codetermine the essential terms and conditions of the employees' employment, such as hiring, firing, discipline, supervision and direction. Based on the undisputed record before me, it appears that PMG exerts significant control over the employees employed by West End Condominium such that the two entities are joint employers of these employees. *M. B. Sturgis, Inc.*, 331 NLRB No. 173 (2000); *Riverdale Nursing Home*, 317 NLRB 881, 882 (1995).

3. Dominic Bentivegna, organizer for Petitioner, testified that he has been organizing the employees at 500 West End Avenue and has solicited employees of that building to become members of Petitioner so that Petitioner could represent them with the Employer over the terms and conditions of their employment. Moreover, the Board has previously found that Petitioner is a labor organization within the meaning of Section 2(5) of the Act. *Hudson Neckwear, Inc.*, 306 NLRB 226 (1992). Thus it appears that Petitioner exists, in whole or in part, to represent employees concerning their terms and conditions of employment. See *Litton Business Systems*, 199 NLRB 354 (1972); and *Butler*

Mfg. Co., 167 NLRB 308 (1967). Based upon the record, I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

Local 32BJ became an Intervener herein after the close of the hearing. I note that Local 32BJ is a constituent member of the Service Employees International Union and the AFL-CIO. Further, the Board has found that Local 32BJ is a labor organization on many occasions, including *Property Markets Group, Inc.*, supra. I therefore also find that they are a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. Petitioner filed a petition seeking an election in a unit comprised of all of the building service employees employed at 500 West End Avenue in Manhattan. The record discloses that there are doormen, a handyman, porters, and a working superintendent employed at this building. However, the record is silent as to the duties of the superintendent. There is evidence that the superintendent reports to PMG, the managing agent of the building. Petitioner takes the position that the superintendent has no supervisory authority and there is no evidence that the building superintendent possess any authority under Section 2(11) of the Act. The Employers refused to participate in the hearing and therefore did not take any positions on any issues herein. Anyone seeking to exclude an individual as a supervisor within the meaning of the Act bears the burden of establishing such status. See *NLRB v. Kentucky River Community*

Care, 121 S.Ct 1861 (2001) Thus, absent evidence that the superintendent possesses supervisory authority enumerated in Section 2(11), he shall be eligible to vote in the election. *Williamette Industries, Inc.*, 336 NLRB 743 (2001); *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536, fn. 8 (1999).

Petitioner seeks a unit that encompasses all employees employed at 500 West End Avenue. As such, I find that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time doormen, porters, handymen and working superintendents employed by Property Markets Group, Inc. and 500 West End Condominium at 500 West End Avenue, New York, New York.

Excluded: All other employees, office clerical employees and professional employees and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time ² and

² Pursuant to Section 102.21(d) of the Board's Statement of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this Decision.

place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.³ Eligible to vote are those in the unit who were employed at the payroll period ending immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike, who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁴ Those eligible shall vote whether they desire to be represented by

³ Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least three full working days prior to 12:01am on the day of the election." Section 103.20(a) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20 of the Board's Rules, requires that the Employer notify the Regional Office at least five full working days prior to 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

⁴ 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

National Organization of Industrial Trade Unions, NOITU, IUJAC, AFL-CIO, Local 32BJ, SEIU, AFL-CIO or neither.⁵

Dated at New York, New York
January 8, 2004

(s) Karen P. Fernbach

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National Labor Relations Board
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with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make a list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on **January 15, 2004**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

⁵ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by no later than **January 22, 2004**.