UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

CLAFLIN CORP. d/b/a BLAIRE HOUSE OF MILFORD Employer/Petitioner[1]	Case 01-RM-108257
and	
HOUGHTON CORPORATION d/b/a BLAIRE HOUSE OF WORCESTER Employer/Petitioner[2]	Case 01-RM-108806
and	
1199 SEIU UNITED HEALTHCARE WORKERS EAST Union[3]	

DECISION AND ORDER

In each of these cases, which were consolidated for hearing, the Employer/Petitioners (referred to collectively as the Employer) seek separate elections in previously certified units at each of two nursing homes. The Union contends that the petitions should be dismissed because the two certified units have now been merged into a larger unit composed of employees of four nursing homes owned by the Employers' parent company, Essex Group, Inc. (Essex Group), so that elections in the smaller units at each nursing home are

[1] The name of the Employer/Petitioner appears as amended at the hearing.

[2] The name of the Employer/Petitioner appears as amended at the hearing.

[3] The name of the Union appears as amended at the hearing.

inappropriate. For the reasons set forth below, I find that the parties have agreed to merge the separately certified units at the two nursing homes in issue in these cases into a larger unit composed of four nursing homes. Accordingly, the larger merged unit is the only unit appropriate for purposes of a representation election, thereby warranting dismissal of each petition.

The petitions in this case were filed under Section 9(c) of the Act. The parties were provided an opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide these matters on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Union is a labor organization within the meaning of the Act; and that a question affecting commerce does not exist concerning the representation of certain employees of the Employers.

I. Facts

The Union and Essex Group were parties to a 2007-2012 collective-bargaining agreement (the Master Agreement) covering certain service and maintenance employees employed by Essex Group at two Massachusetts nursing homes: St. John's Nursing Home, Inc. d/b/a Brandon Woods of New Bedford (Brandon Woods), located in New Bedford, and West Side Corporation d/b/a West Side House (West Side), located in Worcester.[4] The Union or its predecessors had represented Brandon Woods for many years before this, but this contract was the first covering West Side. The contract included terms applicable to both facilities, as well as supplemental agreements setting forth various terms applicable only to Brandon Woods employees employed as of March 1, 2007, and certain terms applicable only to RNs and LPNs at West Side.

Appendix F of the 2007-2012 agreement stated as follows:

[4] The West Side contract also covered RNs and LPNs.

> The parties agree that employees at St. John's Nursing Home, Inc. d/b/a Brandon Woods….and West Side Corporation d/b/a West Side House….who are currently represented by the Union, along with all employees who become represented by the Union, in accordance with this agreement, at these and other long term skilled nursing facilities, assisted living facilities or adult day health centers of Essex, *shall constitute a single bargaining unit,* covered by one Master Contract… [emphasis supplied]

Appendix F also set forth the process for future recognition of the Union at other listed Essex Group facilities, which required a Board-conducted election. Pursuant to that process, the Board certified the Union on July 30, 2008 as the representative of a service and maintenance unit at Blaire House of Worcester, located in Worcester, Massachusetts, and on October 27, 2008 as the representative of a service and maintenance unit at Blaire House of Milford, located in Milford, Massachusetts.

Soon after the Union was certified as the representative of Blaire House of Worcester and Blaire House of Milford, Frank Romano, owner and CEO of Essex Group, notified the Union that Essex Group would be changing the length of the employees' probationary period at those facilities from 60 days to six months, in conformance with the Master Agreement. The parties also began to conduct labor-management meetings at the newly-organized facilities, as called for by the Master Agreement.

In early 2009, the Union and Essex Group negotiated starting rates of pay and various differential rates for Blaire House of Worcester and Blaire House of Milford, agreeing to separate rates for each of those facilities that also differed from the starting rates and differential rates for employees of Brandon Woods and West Side. The employees at each of the two newly-organized facilities then held separate votes through which they ratified both the Master Agreement and the supplemental agreements covering their wage rates at their facility. In a side letter to the Master Agreement, the parties agreed that all terms and conditions in the 2007-2012 agreement, except as specifically noted, would be applied to

Blaire House of Worcester as of May 4, 2009 and to Blaire House of Milford as of May 11, 2009.[5]

In late December 2008, Romano notified Enid Eckstein, a vice president of the Union who was then responsible for representing nursing homes, that employee health insurance rates were going to increase considerably, and he wanted to discuss options available to avoid a large increase in rates. Eckstein held conference calls with Union representatives from all four nursing homes to discuss options, and she met with Essex Group representatives to discuss what to do at all four homes. As a result of these discussions, in February 2009 the parties came to an agreement to contain health care costs. The negotiated solution was applicable to all four homes. Although the four nursing homes had different health insurance carriers due to differences in their geographical location, the changes in health benefits and costs were comparable at all four nursing homes.

In 2009, Essex Group and the Union disputed whether Essex Group was obligated to pay a $.30 increase to employees at all four homes pursuant to the terms of the Master Agreement. The parties went to mediation over the issue, and employee delegates from each of the four nursing homes attended a common mediation proceeding. In response to information requests by the Union, Essex Group provided information about the impact of the increase on all four nursing homes. When mediation did not resolve the dispute, the Union filed for arbitration.[6] At the arbitration proceedings in June 2011, representatives of Essex Group and the Union presented their case with respect to all four nursing homes, and the parties entered into a Stipulated Award over the pay issue that resolved the dispute in a manner that was applicable to all four facilities.

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[5] Although the Master Agreement included a dues deduction provision, the Union has exempted the employees at Blaire House of Milford and Blaire House of Worcester for a period of time from the obligation to pay union dues. Employees at the other two nursing homes are required to pay union dues.

[6] The Union filed separate requests for arbitration on behalf of employees at each of the four nursing homes. Eckstein testified that the Union did so as "double insurance," to ensure that there was no issue concerning arbitrability.

Since the Union was certified to represent Blaire House of Worcester and Blaire House of Milford, one Union representative has been assigned to represent all four Essex Group nursing homes, and the Union has communicated to employees at all four Essex Group nursing homes by means of a common newsletter.

In September 2012, the parties began negotiations for a successor to the Master Agreement. The parties have held five negotiation sessions as of the date of the hearing in this case. The Union's chief negotiator, Pearl Granat, has been assisted in negotiations by a bargaining committee composed of three stewards from each of the four nursing homes. The four nursing homes have been represented by Romano and an attorney. The parties have advanced numerous proposals, the vast majority of which were applicable to all four nursing homes.[7] The Union has sent the same bulletin with updates about the progress of the negotiations to the employees at all four nursing homes.

At the last bargaining session on July 11, 2013, after the petitions in this matter had been filed, Essex Group presented a Proposed Memorandum of Agreement to the Union. Kyle Romano, the executive director of Blaire House of Milford, who was present at the meeting, testified that any proposals made at the July 11 meeting were specific only to West Side House and Brandon Woods. Nonetheless, Essex Group's proposal, which was introduced into evidence, included a provision that specifically referenced all four nursing homes, with no indication as to which nursing homes were intended to be covered by the remaining proposals. The proposal by Essex Group also included the following language:

> The parties are aware that certain Union employees at Blaire House of Milford and Blaire House of Worcester have signed petitions and presented those petitions to management stating that they no longer wish to be represented by the Union. Both facilities have filed petitions for election with the National Labor Relations Board, which will hold hearings to either dismiss the petitions or set elections at these two Essex facilities. Accordingly, until these

[7] The Union did make three proposals regarding shift differentials and a job title that related to specific nursing homes, all of which were rejected by Essex Group.

> matters are resolved, Essex cannot commit to a contract extension for either Blaire House of Milford or Blaire House of Worcester…

II. Analysis and Conclusion

It is axiomatic that the parties to a collective-bargaining relationship may, by contract, bargaining history, and a course of conduct, merge existing certified units into multiplant appropriate units. *White-Westinghouse Corp.*, 229 NLRB 667, 672 (1977). Under the Board's longstanding merger doctrine, when an employer and a union have agreed to merge separately recognized or certified bargaining units into a single overall unit, the larger, merged unit is the only unit appropriate for purposes of a representation election. *Wisconsin Bell, Inc.*, 283 NLRB 1165, 1165 (1987), citing *Gibbs & Cox*, 280 NLRB 953 (1986). See also *Albertson's, Inc.*, 307 NLRB 338 (1992).

Here, the parties' entire course of conduct both before and after certification of the units at the two Blaire House facilities establishes their intent to merge the separately certified units into a larger unit composed of four Essex Group nursing homes. The parties agreed in the Master Agreement that Brandon Woods and West Side, along with any additional Essex Group nursing homes organized by the Union in the future, would constitute "a single bargaining unit" covered by one master contract. See, *Wisconsin Bell, Inc.*, supra, and *General Electric Co.*, 180 NLRB 1094, 1095 (1970), in which the Board found a single multiplant unit where, among other factors, the parties' agreement provided for immediate automatic coverage of newly organized locations.

After the Union won the elections at the two Blaire House facilities, the employees at each of those nursing homes ratified the Master Agreement, and the parties agreed that all terms and conditions of the Master Agreement would apply to the newly organized nursing homes. Thereafter, the parties bargained over health insurance plans with respect to the four nursing homes as a group, participated in common mediation and arbitration proceedings over a wage dispute affecting all four nursing homes, and, until the petitions were filed in the instant cases, engaged in joint negotiations for a successor agreement covering the four facilities. The Union has treated all four nursing homes as one unit,

assigning a common Union representative to all four nursing homes, and communicated with employee's at all four nursing homes by means of a common newsletter.

The fact that the parties have negotiated separate supplemental agreements concerning the wage rates at each of the four facilities, or that the Union charges dues at only two of the nursing homes, does not negate a finding that the separate units have been merged into a single overall unit. *General Electric Co.,* 180 NLRB 1094, 1095 and fn. 6 (1970) (negotiation of supplemental agreements on a local basis is not inconsistent with a finding of multi-plant bargaining); *White-Westinghouse Corp.*, 229 NRLB 667, 672-673 (1977) (the national agreement, bargaining history, and the reality of the bargaining relationship outweigh the use of local supplements). Nor do I find it significant that the Union filed four separate arbitration demands over a grievance that was ultimately heard on behalf of the larger unit as a whole. Finally, the fact that Essex Group took the position, after employees at the two Blaire Houses presented their petitions to management and the petitions in the instant cases had been filed, that it cannot commit to a contract extension for the two Blaire House facilities until this matter is resolved, is not dispositive, as what is most significant is the parties' course of conduct over the last five years since the units were certified.[8]

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[8] In reaching this conclusion, I find no merit to the Employer's claim that the following language from *W.T. Grant Co.*, 179 NLRB 670 (1969), implies that the Board has abandoned the merger doctrine: "the appropriate unit for a decertification election must be co-extensive with *either* the unit previously certified *or* the one recognized in the existing contract unit" [emphasis supplied]. To the contrary, the Board in many subsequent cases has applied the merger doctrine to reject the previously certified unit and rely instead on the recognized contractual unit, including *General Electric Co.*, supra, which also relied upon the quoted language above.

There is also no merit to the Employer's claim that the merger doctrine effectively thwarts employees' Section 7 rights to remove the Union has their bargaining representative, contrary to the Board's stated preference for RM petitions set forth in its decision in *Levitz Furniture,* 333 NLRB 717 (2001). *Levitz* only addressed the circumstances in which an employer may lawfully withdraw recognition or file an RM petition when presented with untainted evidence of employee disaffection. The Board did not address the appropriateness of any particular unit in *Levitz* and did not renounce the merger doctrine in *Levitz* or any subsequent case.

ORDER

IT IS HEREBY ORDERED that the petitions in Case 01-RM-108257 and Case 01-RM-108806 are dismissed.

RIGHT TO REQUEST REVIEW

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, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by August 27, 2013. The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov,[9] but may not be filed by facsimile.

DATED: August 13, 2013

/s/ Jonathan B. Kreisberg

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[9] To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlrb.gov.