

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

VOCA CORPORATION

Employer

and

RENEE BRIESTENSKY, AN INDIVIDUAL

Case No. 8-RD-1826

Petitioner

and

**DISTRICT 1199, THE HEALTH CARE AND
SOCIAL SERVICE UNION, SEIU, AFL-CIO, CLC**

Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

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 are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

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

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All service and maintenance employees, including licensed practical nurses, habilitation specialists, dietary workers, and maintenance workers employed by the Employer at its 512 Kaylynn Drive group home located in Massillon, Ohio, but excluding professional employees, guards, and supervisors as defined in the Act.¹

The Employer is an Ohio corporation headquartered in Dublin, Ohio with group home facilities located throughout Ohio and elsewhere in the United States. The Employer is engaged in the operation of providing habilitation services for individuals with disabilities at its developmental group homes. There are approximately 12 employees in the unit found appropriate.

The Petitioner seeks a decertification election in a unit consisting of all service and maintenance employees, including licensed practical nurses, habilitation specialists, dietary workers and maintenance workers employed at the Employer's Kaylynn Drive Group Home in Massillon, Ohio. The Union contends that the petitioned-for unit is not coextensive with the existing bargaining unit and is, therefore, inappropriate for purposes of decertification. The Union maintains that the unit consists of employees represented by the Union in all of the Employer's facilities located in the State of Ohio, except for two locations.² There are approximately 12 employees in the unit sought by the Petitioner and several hundred employees

¹ The unit is the Employer's contractual unit limited to the Kaylynn Group Home in Massillon, Ohio.

in the unit proposed by the Union. The Employer agrees with the Petitioner that the employees employed at the Kaylynn Drive Group Home in Massillon, Ohio constitute a separate appropriate unit.

The record reveals that beginning in 1989 the Union began organizing the employees employed by the Employer at various group homes operated throughout the State of Ohio. As elections were held and the Union became the collective bargaining representative for each certified bargaining unit, it negotiated separate collective bargaining agreements with the Employer. At the expiration of the separate collective bargaining agreements in 1993 the Union and the Employer negotiated three regional master agreements covering the Eastern Ohio, Western Ohio and South Central Ohio area group homes as well as a separate contract for the Belmont Habilitation Center. These agreements were in effect from October 1, 1993 through June 30, 1996.

The record establishes that the 1993 negotiations were initially conducted at the various group homes locations and were then later consolidated into regional locations for convenience and cost efficiency. The Union sought to consolidate or merge the separate bargaining units into a single bargaining unit during the 1993 negotiations. However, this proposal was explicitly rejected by the Employer's Director of Human Resources, Hilary Franklin, in a May 18, 1993 letter to the Union. Franklin's letter stated, in part, the following:

After our first bargaining session with you today, I feel that it is necessary to clearly restate Voca Corporation's position on regional negotiations. We are negotiating regionally for purposes of cost efficiency and convenience. We still plan to recognize each unit as such, and to have the same number of contracts moving forward. We do understand your

² The Union does not seek to include the C&W Woodward Home and the Sidney Home in its proposed statewide unit.

position of having one contract per region, but we do not agree with it. We will recognize units as outlined by the National Labor Relations Board.³

The recognition language in the 1993-96 Regional Master Agreements each stated that the Employer recognized the Union as the exclusive collective bargaining representative within each bargaining unit as certified by the National Labor Relations Board. Each Regional Master Agreement contained appendixes with separate wage schedules for the various group homes in the region.

The record revealed that after 1993 the Union was certified as the collective bargaining representative at additional group homes owned and/or operated by the Employer throughout the State of Ohio. On September 7, 1995 the Board certified the Union as the collective bargaining representative for all the service and maintenance workers, including licensed practical nurses, habilitation specialists and dietary workers employed by the Employer at its 512 Kaylynn Drive, South East, Massillon, Ohio facility. The Kaylynn Drive Group Home is one of four separately certified bargaining units commonly referred to as the Molly Stark Replacement Homes. According to the record, the Molly Stark Replacement Homes include four group homes: Kaylynn, David, 42nd Street and Market Street. These homes were created to offer services eliminated at Molly Stark Hospital.

It appears from the record that the first collective bargaining agreement covering the Kaylynn Group Home was also applicable to the other three Molly Stark Replacement Homes. Although it is clear from the record that the four homes were certified as separate bargaining

³ The Employer's Manager of Employee Relations, Tim Vogt testified that the Employer rejected the Union's proposal of a single statewide bargaining unit in 1993 and 1996.

units: other details pertaining to the negotiations between the parties and the terms of the contract were not offered into the record.⁴

The record disclosed that in 1996 the parties agreed to a master contract that applied to all of the Ohio bargaining units in existence. The contract became effective on July 1, 1996 and expires on June 30, 1999. Separate wage schedules for the individual bargaining units were agreed to and attached to the contract. The record reveals that although the Union again proposed that the Employer agree to recognition language merging the 14 bargaining units into one, the Employer rejected the Union's proposal. The recognition language agreed to in the 1996 contract is identical to that contained in the 1993 agreement. Bargaining units that were certified subsequent to July 1, 1996 are not covered by this master agreement. The Employer and the Union have agreed to separate collective bargaining agreements for the facilities that were certified after July 1, 1996. It appears from the record that there are two such facilities.

The Employer's Operation Director for the Eastern Ohio Region, Ed Banks, testified that he reports directly to Ray Hayes, President of Voca. According to Banks, six other operation directors, responsible for other regions in Ohio, Indiana, North Carolina, Washington, D.C. and West Virginia, also report to Hayes. Banks is responsible for supervising four area managers within a seven county area in Eastern Ohio from his Cadiz, Ohio office. Each group home has a program or clinical supervisor who reports to the area manager. Banks testified that he is responsible for the day-to-day operations and labor relations in his region. He does not have any operational or administrative responsibilities in the other regions. Banks also indicated that although the corporate human resource department establishes personnel policies, the individual homes conduct their own hiring. With regard to job openings, the record reveals that a job

⁴ The record does not include the first contract that covered the Kaylynn, David, 42nd Street and

opening is posted in the group home and employees within that home have the right to bid on the available position. If the position is not filled by any employees within the home the position is then open for outside bids from employees at other locations. Although the record establishes that permanent transfers from one location to another are possible, the record is unclear as to what extent this has ever occurred. Furthermore, the record does not indicate any clear evidence that temporary transfers have occurred.⁵ Banks is responsible for the grievances generated in his region, but he is not involved in grievances generated outside his region.⁶

The record also revealed that the group homes operate as autonomous facilities that are not inter-dependent on each other. Furthermore, in some cases the group homes are located over a hundred miles from each other.

The Board's general rule is that the petitioned-for unit in a decertification election must be coextensive with the certified or recognized unit. **West Lawrence Care Center, 305 NLRB**

Market Street Group Homes.

⁵ The Eastern Ohio area director for District 1199, SEIU, Jennifer Schmitt testified that she believed that at times, LPNs from a facility in Stark County moved from home-to-home. However, she did not provide any specific testimony with respect to when this occurred, or who the employees were. Schmitt also testified that she believed that in the Columbus area an employee assigned to one facility might pass medications at another facility. However, she did not provide any specific details as to the employees involved or when this incident may have occurred. Neither incident described by Schmitt pertains to the petitioned-for unit herein. The Employer's witnesses were not aware of any temporary transfers of employees from one facility to another.

⁶ The record disclosed that in 1995 one arbitration was conducted to resolve four grievances (one per region) involving a wage "look back" issue affecting all employees. The Union appears to contend that the Employer's agreement to one arbitration consolidating the grievances evidences its consolidation of the bargaining units. However, the Employer and the Union executed a stipulation with regard to these grievances and their consolidation for arbitration which stated that the consolidation ". . . does not alter, append, revise, or violate the terms of the collective bargaining agreement between the parties, nor does it affect the status of the current collective bargaining units." The Union also relies on the arbitrators characterization in his decision that the Union represented a unit of about 600 as support for the Union's position that all of the collective bargaining units have been merged into one. However, as the Board noted in **Marion**

212 (1991); Mo's West, 283 NLRB 130 (1987). Since the unit petitioned-for was certified by the Board in 1995, the critical issue in this case is whether the parties have merged that unit into a broader one.

In **Remington Office Machines, Minneapolis Branch, 158 NLRB 994 (1966)** the Board considered the issue of whether parties had merged a certified unit into a multi-site unit. The union argued that the parties had merged the units together by bargaining on a centralized basis. The contracts covering each site were separate but had identical termination dates and were uniform regarding the terms and conditions of employment.

The Board concluded that the terms of the contract gave no clear indication that the parties intended to effect a consolidation of the original certified units into an overall unit. In so finding, the Board noted that there was no “unmistakable indication that the parties mutually intended to extinguish the right of employees in each branch office to select, change or decertify their bargaining representatives . . .” **Id. at 997**. See also **Utility Workers of America, AFL-CIO, 203 NLRB 230, 239 (1973), enfd. 490 F.2d 1383 (6th Cir. 1974)**.

In **Louisiana Dock Company, Inc., 293 NLRB 233 (1989)** the Board considered issues similar to those in the instant case. In that case the Employer had recognized the Union in separate units. In that case, as here, the parties had a master agreement that covered several sites.

The recognition clause read as follows:

Section 1. The Company recognizes the Union as the sole collective bargaining agent for wages, hours, and conditions of employment for all employees at its Harahan and Westwego, Louisiana fleeting and repair facility, its Cairo, Illinois fleeting and repair facility; and its coal transfer facilities located at Hall Street, St. Louis, Missouri, Columbia Bottoms, St.

Power Shovel, Inc., 230 NLRB 576, 577-78 (1977), determinations involving appropriate units are matters to be determined by the Board and not by arbitrators.

Louis County, Missouri, and at Louisville, Kentucky, excluding all office and clerical employees, professional employees, guards and supervisors, as defined in the National Labor Relations Act.

The Board held that the language set forth above did not establish an unmistakable intent to merge separate units into one. The Board also found that the bargaining history in that case did not establish that the parties had merged separate bargaining units. While there was only one master agreement covering the facilities referred to in the recognition clause, each facility was covered by an addendum that set forth the economic terms.⁷

Applying these principles to the instant case, I cannot conclude there is unmistakable indication that the parties intended to merge the Kaylynn Group Home unit which was separately certified in 1995 into a state-wide unit. In this regard, I note that the language of the recognition clause does not clearly indicate such intent. In addition, while the Union has certainly pursued the Employer's agreement to a state-wide unit in both 1993 and 1996, the Employer has clearly refused to acquiesce in that position. In fact, the parties have continued to negotiate separate collective bargaining agreements for newly certified bargaining units. The fact that the parties execute one master agreement covering the various units is insufficient to establish that the units therefore have merged into one.

Because of the short and equivocal history of bargaining regarding the Employer's Kaylynn Group Home facility I find the instant case to be distinguishable from the Board's decisions in **General Electric Company, 180 NLRB 1094 (1970)** and **White Westinghouse Corporation, 229 NLRB 667 (1977)**. In both of these cases the parties had, through a long history of bargaining of approximately 20 years, merged separately certified units into a multi-plant unit.

As noted above, in the instant case, the Employer has consistently maintained that it has agreed to bargain a master agreement to cover the Ohio facilities only as a matter of convenience and by doing so it has not agreed to merge the units. I do not agree with the Union that the Employer's conduct during negotiations in 1993 and 1996 succeeds in overriding the Employer's explicit rejection of an overall statewide single unit.

Accordingly, I shall direct an election in the petitioned-for unit limited to the Employer's Kaylynn Group Home in Massillon, Ohio facility.⁸

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on

⁷ Similarly, in the present case the Master Agreement contains an appendix with different wage schedules for the various facilities.

⁸ At the hearing, the Union filed a Motion to Stay the Proceeding in this matter based upon the Board's "Blocking Charge Rule." Specifically, the Union's Motion maintains that two charges filed in 1994, Case No. 9-CA-32133-2 and 9-CA-32278, preclude further processing of the instant matter. These charges were the subject of a Consolidated Complaint which was heard by an administrative law judge. The case is presently pending before the Board pursuant to exceptions filed by Counsel for the General Counsel.

Section 11730, et. seq. of the Board's Casehandling Manual sets forth the Board's policy is to hold ". . . in abeyance any representation case (RM, RC, or RD) or union deauthorization (UD) where pending unfair labor practice charges filed by a party to the R or UD cases are based upon conduct of a nature which would have tendency to interfere with the free choice of the employees in an election, were one to be conducted in the petition."

I deny the Union's Motion on the grounds that there is no evidence to persuade me that the above-cited charges would in any way interfered with the free choice of the employees in the unit found appropriate herein. This is especially so since the alleged unfair labor practices would have occurred long before the unit herein was certified.

vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States 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. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **District 1199, The Health Care and Social Service Union, SEIU, AFL-CIO, CLC.**

LIST OF VOTERS

In order to ensure that all eligible voters 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 that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).** The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary

circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

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, D.C. 20570-0001. This request must be received by the Board in Washington, by **May 5, 1999**.

Dated at Cleveland, Ohio this 21st day of April 1999.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

420-1209