

**ARA Services, Inc. and District Lodge 67, International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 5-RC-9243**

October 23, 1975

**DECISION ON REVIEW AND ORDER**

BY CHAIRMAN MURPHY AND MEMBERS  
JENKINS AND PENELLO

On April 10, 1975, the Regional Director for Region 5 issued a Decision and Direction of Election in the above-entitled proceeding, in which he found that it would effectuate the purposes of the Act to assert jurisdiction over the Employer herein. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision on the grounds that, in asserting jurisdiction, he departed from officially reported Board precedent and made findings of fact which are clearly erroneous on the record.

By telegraphic order dated May 15, 1975, the Board granted the request for review and stayed the election pending decision on review. Thereafter, the Employer filed a brief on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review, including the Employer's brief on review, and makes the following findings:

The Employer, a Delaware corporation, is customarily engaged in the nationwide distribution and sale of food and related services. In October 1974, the Employer contracted with Prince George's County, Maryland, an exempt employer within the meaning of Section 2(2) of the Act, to provide automotive fleet maintenance services for approximately one-half of the county's 3,300 to 3,400 vehicles.<sup>1</sup> To discharge its contractual obligation, the Employer currently operates three maintenance facilities in Brentwood,

Forestville, and Marlow Heights, Maryland.<sup>2</sup> The Employer's maintenance functions range from general vehicle preventative maintenance to extensive automotive mechanical repairs. The county also maintains its own similar but separate garage facilities in the county where it uses its own employees.

The Regional Director, while noting that, through the contract, the county had reserved a degree of control over the Employer and its operations, concluded that the Employer retained basic control over the wages, hours, and working conditions of its employees and it could therefore negotiate a collective-bargaining agreement. The Regional Director also concluded that the work of the Employer was not intimately connected with the exempt operations of the county.

The Employer contends that the Board should not assert jurisdiction here because the Employer's operations are intimately related to essential county functions and because the county, through contract and in practice, retains substantial control over the Employer's operations and labor relations. For the reasons stated hereinafter, we agree that the county possesses and exercises substantial control over the labor relations of the Employer, rendering it impossible for the Employer to bargain effectively with any union concerning wages, hours, and other conditions of employment.<sup>3</sup>

An examination of the contract<sup>4</sup> between the Employer and the county clearly indicates the broad control that the county maintains over the Employer's labor relations. Thus, the contract dictates, *inter alia*, the hours that the Employer must remain open;<sup>5</sup> the various classifications of employees and the number of employees in each classification;<sup>6</sup> the wage rate applicable to each classification of employee;<sup>7</sup> the various records, reports, and insurance which the Employer must maintain; the number of facilities which the Employer must operate and certain specifications thereof;<sup>8</sup> the manner in which

3:30 p.m. and 3:30 p.m. to 12 midnight and to provide certain off-hour emergency services.

<sup>6</sup> The contract provides that, once the initial staffing configuration has been realized, the county must approve any reduction or additions.

<sup>7</sup> The contract provides that "the wage rate paid by the contractor to each employee shall be approved in advance by the contracting officer." Further, the proposal submitted by the Employer provides a specific maximum wage rate for each classification of employee. The Employer may not pay wages above this maximum limit without prior approval from the county.

<sup>8</sup> The contract provides that "site location, site configuration, and shop layout" shall be subject to prior county approval. The facility specifications provided for in the contract relate to size, lighting, storage space, etc.

<sup>1</sup> A separate unit of the Employer known as "Prince George's County Fleet Management" performs the services provided for under the contract.

<sup>2</sup> The Employer states in its brief on review that subsequent to the Regional Director's Decision and Direction of Election herein, a fourth facility has been opened, pursuant to a decision of the county, in College Park, Maryland.

<sup>3</sup> In view of our holding herein, we find it unnecessary to pass on the issue of whether the services provided by the Employer are intimately connected with the exempted operations of the county.

<sup>4</sup> The contract, or operating agreement, consists of three separate documents: the invitation to bid, the request for proposal; and the contract for automotive fleet management and maintenance services. The latter document incorporates by reference the former two documents.

<sup>5</sup> The contract requires the Employer to operate two shifts from 7 a.m. to

the Employer is to obtain parts and supplies;<sup>9</sup> the various maintenance and repair programs that the Employer is required to establish;<sup>10</sup> the holidays, vacations, and other benefits that the Employer may give;<sup>11</sup> the method under which the Employer is to be compensated; and, that "the extent and character of the work to be done by the contractor shall be subject to the general control and approval of the contracting officer [county]." The contract further requires that the Employer develop an affirmative action program that meets county approval, and give preferential treatment to county residents applying for jobs;<sup>12</sup> all subcontractors used by the Employer must be previously approved by the county; the county must be given access to all the Employer's personnel, books, records, correspondence, receipts, vouchers, *etc.*; the county approve all repairs costing \$100 or more; all overtime be previously approved by the county;<sup>13</sup> and all facilities be used exclusively for county vehicle repair and maintenance. Finally, pursuant to the contract, the county reserves the following rights: to request the dismissal of employees "whose performance or actions are obviously detrimental to the program";<sup>14</sup> to approve employees before they are hired by the Employer;<sup>15</sup> to purchase the equipment and vehicles of the Employer upon termination of the contract by the county for convenience or nonrenewal of the contract; and to make unannounced on-site inspections of the Employer's facilities at such times and at such frequency as the county deems necessary.

In addition to the foregoing, there are several other factors which reveal the broad extent to which the county is involved in the Employer's operations. The telephones at the Employer's facilities are tied into the county switchboard and the Employer, like county offices, has a designated extension number. The record also reveals that the Employer's facilities

are held out to the public as county facilities.<sup>16</sup> The Employer, like county offices, uses the county's mail courier service and receives county memorandums and newsletters.

In practice, the county provides direct supervision of the Employer's operations through its chief of vehicle maintenance and management, William Banwarth. Banwarth, who maintains a desk at one of the Employer's facilities, testified that he spends approximately 15–18 hours per week at the Employer's facilities. In addition, he stated that he visits the facilities during the evenings and weekends. Banwarth testified that he is responsible for making sure that there is absolute contract compliance and that he checks the Employer's payroll records to make sure that the county is getting every "nickles worth" of service that it is paying for. In this regard, Banwarth testified that if he observed an excess of manpower over available work at any of the Employer's facilities he would inform the Employer's project manager to correct the situation.<sup>17</sup> Banwarth stated that, while the county had no other inspectors on the job, he received feedback from county agencies whose vehicles were serviced by the Employer. Banwarth stated that on the basis of this feedback he would direct the Employer to either implement or change operating procedures. For instance, the record reveals that Banwarth has directed the Employer, pursuant to written memorandums, to implement procedures regarding off-hour repairs for emergency vehicles, security of county assets, inspections of finished repairs, installation of service stickers on serviced vehicles, and the installation of new rather than used tires on certain vehicles.<sup>18</sup>

In sum, there is no doubt from this record that the county exercises substantial and extensive control over the labor relations of the Employer, and is a

<sup>9</sup> The contract provides that, where possible, the Employer must requisition parts or supplies from the county. Where this cannot be done, the Employer is required to obtain parts or supplies from suppliers which have been approved by the county.

<sup>10</sup> For example, the contract specifies the different services which must be included under the preventative maintenance program required under the contract. The contract also requires the Employer to establish, subject to county approval, a system of priorities for servicing public safety vehicles.

<sup>11</sup> The Employer's district manager, Eshelman, testified that the county and the Employer had agreed upon a benefits plan and that the Employer could not change its holidays, vacations, or other benefits without prior approval from the county. With respect to holidays, the contract provides, "no holidays may be observed by the contractor which do not conform to the County's designated holiday schedule."

<sup>12</sup> The contract states that the county's goal is to have 80 percent of the work force comprised of local labor.

<sup>13</sup> Eshelman described an emergency situation where he was required to seek authorization from the county's chief of vehicle maintenance and management, William Banwarth, before he could authorize 2 hours of overtime for two employees.

<sup>14</sup> Eshelman testified that one employee and a supervisor were discharged at the direction of the county.

<sup>15</sup> The contract provides that "prior to assigning any contractor employee to perform services for the County, the contractor shall obtain the

contracting officer's [county] approval of such employee to be so assigned. Similarly, the continuing assignment of such employees shall be subject to County approval." Eshelman explained that the Employer may initially hire the full complement of employees provided for under the contract subject only to county approval within a 30-day probationary period. However, once the full complement has been hired, the county is required to give prior approval to either replacements or additional employees. Eshelman also stated that, pursuant to the county's request, the county is now involved in the interviewing and hiring process for supervisors and managerial personnel.

<sup>16</sup> An exhibit in the record reveals that the Employer's service vehicles and facilities are marked with the county's seal. The signs on the facilities read "Prince George's County Central Vehicle Maintenance Facility—Managed by Office of Central Services—Division of Vehicle Maintenance and Management."

<sup>17</sup> In a letter to the Employer's project manager, Banwarth explained that on one evening he had observed certain mechanics standing around while a shop foreman was sitting at a desk reading a book. He further explained that he told the foreman to direct the mechanic's activities to more productive endeavors even though there were no vehicles to work on at that time.

<sup>18</sup> These memorandums also provide methods for implementing these procedures.

joint employer with it of the Employer's employees. We conclude that the Employer shares the statutory exemption enjoyed by Prince George's County, Maryland, and that we are precluded from asserting jurisdiction here.<sup>19</sup> Accordingly, we shall dismiss the petition.

### ORDER

It is hereby ordered that the petition be, and it hereby is, dismissed.

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<sup>19</sup> *Herbert Harvey, Inc.*, 171 NLRB 238 (1968). Compare: *Current Construction Corp.*, 209 NLRB 718 (1974).