

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**ARAMARK SERVICES, INC.**

and

**Case No. 29-CA-28625**

**UNION OF NEEDLE TRADES,  
INDUSTRIAL AND TEXTILE EMPLOYEES, HOTEL  
EMPLOYEES AND RESTAURANT EMPLOYEE  
INTERNATIONAL UNION, LOCAL 100**

***Kevin R. Kitchen, Esq., Counsel for the General Counsel  
Vonda Marshall Harris, Esq., for the Respondent  
Lia Fiol-Matta, Esq., Counsel for the Charging Party***

**DECISION**

**STATEMENT OF THE CASE**

Howard Edelman, Administrative Law Judge. This case was tried on April 29, 2008. A Complaint and Notice of Hearing issued on February 28, 2008 filed by the Union of Needle Trades, Industrial and Textile Employees, Hotel Employees and Restaurant Employee International Union, Local 100 herein called the Union, alleging that Aramark Services Inc., herein called Respondent, refused to supply the Union with information relating to a grievance filed against the Respondent.<sup>1</sup>

On the entire record, including my observations of the demeanor of the witnesses, and a consideration of the briefs filed by Counsel for General Counsel and Respondent, I make the following:

**FINDINGS OF FACT**

At all material times Respondent is a domestic corporation, with its principal office and place of business located at 1101 Market Street, Philadelphia, Pennsylvania and a place of business located at 1 Court Square, Long Island City, New York, herein called the Long Island City facility, has been engaged in the business of providing food services to the public.

During the past calendar year, which period is representative of its operations generally, Respondent, in conducting its business operations described above, derived gross annual revenues in excess of \$500,000. During the past calendar year, Respondent, in conducting its business operations described above, purchased and received at its Long Island City, New York facility goods and materials valued in excess of \$5,000 directly from points located outside the State of New York.

---

<sup>1</sup> All dates herein are 2007, unless otherwise indicated.

At all material times, Respondent has been an employer within the meaning of Sections 2(2), (6) and (7) of the Act.

5 At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

10 All food service employees and Java City Coffee Shop employees employed at Citibank, Long Island City, New York, excluding all vending service employees, managers, assistant managers, clerical, supervisory and professional employees and guards as defined in the Act.

15 At all material times, the Union has been recognized by Respondent as the exclusive collective bargaining representative of the Unit. Said recognition has been embodied in a series of collective-bargaining agreements, the most recent of which is effective by its terms for the period March 1, 2005, to February 28, 2008.

20 At all material times, the Union, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the Unit for the purpose of collective bargaining.

25 On or about September 18, October 1, and 12, 2007 the Union by letter requested the following information:

30 In order to investigate and determine the merits of this grievance the Union requested the following information be provided within seven (7) days as set forth below:

- 35
1. Two years of weekly consumer counts of Café & catering.
  2. Two years of weekly sales reports of Café & catering.
  3. Two years of weekly time cards of all employees.
  4. Two years of weekly payroll record of all employees.
  5. Copy of Aramark's current contract with Citigroup as well as the previous contract with Citigroup.
  6. Updated Bargaining Unit List, including: Social Security, Full Name, Date of Hire, Pay of Rate and Classification.

40 Respondent has refused to comply to the Union's request.

45 Bello responded: "ARMARK does not wish to divulge the information requested by you (Local 100) on September 18, 2007. We believe that the information requested does not pertain to the grievance filed in regard to a reduction of service hours".

On October 12, the Union sent Respondent a duplication of its two previous requests. Respondent did not respond.

50

## ANALYSIS AND CONCLUSION

## THE UNION'S INFORMATION REQUEST

5           The general principles regarding the obligation of an employer to supply information to  
 the union are clear and not in dispute. An employer, on request must provide a union with  
 information that is relevant to its carrying out its statutory duties and responsibilities in  
 representing employees. *Pulaski Construction Co.*, 345 NLRB No. 66, ALJD slip op, at 5  
 (2005); *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). The duty to provide information  
 10 includes information relevant to contract administration and negotiations. *CEC, Inc.*, 337 NLRB  
 516, 518 (2002); *Barnard Engineering Co.*, 282 NLRB 617, 619 (1987).

          Respondent alleges an economic defense, but turned over no evidence to the Union to  
 support its contention.

15

I find that the absence of any details to support Respondent's contention does not exist.

          In addition, I find that the Union's grievance as set forth below:

20

1. Two years of weekly consumer counts of Café & catering.
2. Two years of weekly sales reports of Café & catering.
3. Two years of weekly time cards of all employees.
4. Two years of weekly payroll record of all employees.
5. Copy of Aramark's current contract with Citigroup as well as the  
 25 previous contract with Citigroup.
6. Updated Bargaining Unit List, including: Social Security, Full Name,  
 Date of Hire, Pay of Rate and Classification.

25

30 I conclude, given Respondent's economic defense, I find the Union's grievance 2, 3, 4 and 6 are  
 presumptively relevant.

          While not presumptively relevant, given Respondent's economic defense, as set forth in  
*Shoppers Food Warehouse*, 315 NLRB 258, 259, (1994) and *Cerico Distribution Center*, 346  
 NLRB 1214, 1215 (2006). I conclude requests 1 and 5 have relevancy because Respondent's  
 35 economic defense.

35

## RESPONDENT'S CONFIDENTIAL DEFENSE

40 Respondent always reduced its hourly rate by ½ hour on Memorial Day and that  
 restoration of the ½ hour was restored on Labor Day. In this case, Respondent for the first time  
 argued that they could not restore the ½ hour based upon "economic conditions".

          During the course of this trial after General Counsel rested his case, Respondent for the  
 first time, contended that all of the Union's grievance requests were confidential.

45

          It is well settled that confidentiality claims must be timely raised before trial. The reason  
 a confidentiality claim must be timely raised is so that the parties can attempt to seek an  
 accommodation of the employer's asserted confidentiality concerns before trial. *Detroit*  
*Newspaper Agency*, 317 NLRB 1071, 1095; *Tritac Co.*, 286 NLRB 522 (1987). An employer is  
 50 not relieved of its obligation to turn over relevant information simply by invoking concerns about  
 confidentiality, but must offer to accommodate both its concern and its bargaining obligations,  
 as is often done by making an offer to release information conditionally or by placing restrictions

on the use of that information. *U.S. Testing, Inc. v. NLRB*, 160 F.3d 14, 20 (D.C. Cir. 1998)

Accordingly, I find Respondent’s claim of confidentiality during the Respondent case was not timely or appropriate, and therefore I find Respondent’s contention is without merit.

5

ARTICLE 27 OF THE PARTIES’ COLLECTIVE BARGAINING AGREEMENT

Respondent also contends that Article 27 of the collective-bargaining agreement grants Respondent the discretion to make operational changes. This provision of the contract provides, in pertinent part:

10

The Employer shall have the exclusive right to plan, direct and control its operations; the right to decrease or increase the scope thereof; the right to install or remove equipment, the right to determine the size and composition of the working force; the Employer may, after negotiations with the union, establish and maintain reasonable operating rules and regulations.

15

In *National Broadcasting Company, Inc.*, 352 NLRB No.15 states:

20

The Board does not pass on the merits of the union’s claim that the employer has breached the collective-bargaining agreement, in determining whether information relating to the processing of a grievance is relevant. *Dodger Theatricals, supra* at 15; *Certco Distribution Center, supra* at 2; *Shoppers Warehouse, supra* at 259.

25

Respondent contends that Article 27 provides that Respondent does not have to restore the wages in issue.

30

However, the Board sets forth in *National Broadcasting Co., supra*, that this issue Article 27 must be decided by an arbitrator, and not the Board.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

35

ORDER

The Respondent, Aramark Services, Inc., Long Island City, New York, its officers, agents, successors, and assigns, shall

40

1. Cease and desist from

(a) Refusing to bargain collectively with Union of Needle Trades, Industrial and Textile Employees, Hotel Employees and Restaurant Employee International Union, Local 100, by refusing to furnish it with information that it requests which is relevant and necessary to the

45

---

<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

50

Union’s performance of its functions as the collective-bargaining representative of Respondent’s unit employees.

5 (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

10 (a) Promptly furnish the Union with the information it requested in its letter of September 18, 2007.

15 (b) Within 14 days after service by the Region, post at its Long Island City, New York facility, copies of the attached notice marked “Appendix.”<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility  
20 involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 18, 2007.

25 (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

30 Dated, Washington, D.C., July 18, 2008.

35 \_\_\_\_\_  
Howard Edelman  
Administrative Law Judge

45 \_\_\_\_\_  
50 <sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain collectively with Union of Needle Trades, Industrial and Textile Employees, Hotel Employees and Restaurant Employee, International Union, Local 100.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL promptly furnish the Union with the information it requested in its letter of September 18, 2007.

ARAMARK SERVICES, INC.

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor  
Brooklyn, New York 11201-4201  
Hours: 9 a.m. to 5:30 p.m.  
718-330-7713.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862