

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

ARAMARK UNIFORM AND CAREER APPAREL,  
LLC

Employer

and

TODD ALLEN FIELDS

Petitioner

and

SERVICE WORKERS UNITED<sup>1</sup>

Union

Case 18-RD-2692

**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.

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.<sup>2</sup>

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<sup>1</sup> The name of the Union appears as amended at the hearing.

<sup>2</sup> The Employer, Aramark Uniform and Career Apparel, LLC, is a Delaware corporation with a facility located at 5330 Industrial Boulevard, Fridley, Minnesota, where it is engaged in providing uniform cleaning services. During the past 12 months, the Employer derived gross revenue in excess of \$500,000 and it purchased and received goods valued in excess of \$50,000 which were shipped directly to its Fridley, Minnesota facility from points located outside the State of Minnesota.

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 parties stipulated that the following unit is appropriate for purposes of collective bargaining:

All regular full-time and part-time production employees in Fridley, MN and excluding all employees in the load builder classification, maintenance, service drivers, office clerical, fleet manager, management employees, and supervisors and guards as defined in the National Labor Relations Act.

The Employer granted voluntary recognition to the Union on October 14, 2009 in the above-described bargaining unit. The Union contends that the recognition agreement constitutes a recognition bar to the processing of the petition and that therefore the petition should be dismissed. More specifically, Union counsel argued at the hearing that the Board's decision in *Dana Corp.*, 351 NLRB 434 (2007), "constituted a radical departure from well settled, judicially approved precedent"; and that the decision "undercuts the process of voluntary recognition as a legitimate mechanism for implementing employee free choice and promoting stable bargaining relationships." The Union makes similar arguments in its post-hearing brief. The Employer contends simply that "the [parties'] representations with regard to the stipulation [Board Exhibit 2] and the recognition are accurate and the [majority status of the] unit was certified by Mr. Silverman [the neutral]." Finally, the Petitioner contends that "[a] lot of them signed it just because they felt harassed and that by signing it they would be left alone then." The hearing officer did not permit the parties to introduce evidence in support of or in opposition to Petitioner's contention.

In *Dana Corp.*, the Board addressed the issue of “whether an employer’s voluntary recognition of a union based on a presumptively valid showing – usually consisting of signed authorization cards – should bar a decertification or rival union election petition for some period of time thereafter.” 351 NLRB at 437. While noting that it continued to support voluntary recognition, the Board also stated that “[t]he preference for the exercise of employee free choice in Board elections has a solid foundation in distinctions between the statutory process for resolving questions concerning representation and the private voluntary recognition process.” *Id.* at 438. Expressing concern that recognition, such as the agreement entered into by the Employer and the Union in the present case, may impair employee free choice, the Board held that “a higher standard of notice to employees that recognition has been extended, and a postrecognition opportunity for employees to petition the Board for an election, must be met before an election bar is imposed.” *Id.* at 441.

To this end, the Board determined that in cases where an employer has granted voluntary recognition to a union, the parties are to promptly notify the Regional Office of the grant of voluntary recognition, including the description of the unit covered by the recognition agreement. The Regional Office must then prepare a notice to employees advising them (1) of the fact and date of voluntary recognition; (2) they have a right to decide whether to be represented regardless of whether they previously signed authorization cards; (3) within 45 days of the notice, a decertification petition supported by at least 30 percent of the employees in the unit could be filed; (4) a properly filed and supported petition would be processed according to the Board’s normal procedures; and (5) if no petition is filed within the 45-day time period, the union’s representative status could not be challenged for a reasonable period of time.. *Id.* at 443.

Here, no party notified the Regional Office that the Employer had voluntarily recognized the Union as the exclusive collective-bargaining representative of unit employees.

Consequently, the Regional Office did not provide the Employer with a notice as described in the paragraph immediately above for posting so that employees could exercise their Section 7 rights in the manner prescribed by the Board in *Dana Corp.*

I am bound by the decisions of the Board, including the Board's decision in *Dana Corp.* Based on the record herein, I conclude that the facts and circumstances presented are precisely those that the Board was concerned with in *Dana Corp.* when it decided to modify the recognition bar doctrine. Since unit employees were not given the notice that they had 45 days to file a decertification petition, I conclude that the petition in this case was timely filed, and I will direct an election in the stipulated unit.

6. 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 regular full-time and part-time production employees in Fridley, MN and excluding all employees in the load builder classification, maintenance, service drivers, office clerical, fleet manager, management employees, and supervisors and guards as defined in the National Labor Relations Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Service Workers United. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that 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 which 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. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### **B. Employer to Submit List of Eligible Voters**

To ensure 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 with them. *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, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before December 7, 2009. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>3</sup> by mail or by facsimile transmission at (612) 348-1785. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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<sup>3</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

## **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 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by December 14, 2009. The request may be filed electronically through E-Gov on the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>4</sup> but may not be filed by facsimile.

Signed at Minneapolis, Minnesota, this 30th day of November, 2009.

/s/ Marlin O. Osthus

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Marlin O. Osthus, Regional Director  
National Labor Relations Board  
Eighteenth Region  
330 South 2<sup>nd</sup> Avenue, Suite 790  
Minneapolis, MN 55401-2221

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<sup>4</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.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.nlr.gov](http://www.nlr.gov).