

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of
ARAMARK EDUCATIONAL SERVICES, INC.

and

UNITE HERE LOCAL 26

Case 1-CA-43486

In the Matter of
ARAMARK d/b/a HARRY M. STEVENS, INC.

and

UNITE HERE LOCAL 26

Case 1-CA-43657

In the Matter of
ARAMARK SPORTS, INC.

and

UNITE HERE LOCAL 26

Case 1-CA-43658

**RESPONDENTS' ANSWERING BRIEF IN RESPONSE TO THE GENERAL
COUNSEL'S EXCEPTIONS AND IN FURTHER SUPPORT OF RESPONDENTS'
EXCEPTIONS TO THE SUPPLEMENTAL DECISION ON REMAND**

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Dated: *December 8, 2009*

INTRODUCTION

Respondents ARAMARK Educational Services, Inc. (“ARAMARK Educational”), ARAMARK d/b/a Harry M. Stevens, Inc. (“ARAMARK Stevens”), and ARAMARK Sports, Inc. (“ARAMARK Sports”) (collectively, “ARAMARK”), by their undersigned counsel, submit the following Answering Brief in response to the General Counsel’s Exceptions and supporting Brief, and in further support of Respondents’ position that the National Labor Relations Board (“Board”) should reject the Recommended Order of the Administrative Law Judge and dismiss this case with prejudice.

ARAMARK relies on its Brief in Support of the Exceptions of Respondents to the Supplemental Decision on Remand, filed on November 6, 2009 (hereinafter, “ARAMARK’s Primary Brief”). ARAMARK submits this Response in order to address three points raised in the General Counsel’s Exceptions and Brief, filed on November 5, 2009. First, the General Counsel completely ignored the “contract waiver” argument, that ARAMARK had already bargained for and received the right to implement these policies in at least two of the CBAs, and arguably the right to implement the reasonable work rules in each of the subject locations. Second, the General Counsel inaccurately characterized ARAMARK’s policy as providing for an “indefinite suspension,” while the policy clearly allowed and encouraged employees to immediately provide – with immunity – corrected documentation and avoid suspension completely. Finally, the General Counsel made certain arguments in the Exceptions that were wholly unsupported by record evidence.

ARGUMENT

First, the General Counsel fails to address a simple, yet critical issue. It is unrefuted that the Charging Party actually bargained language specifically designed to address the no-match letter issues at MIT and Fenway. *See* ARAMARK's Primary Brief at pp. 6-7, 16-19; Tr. at 59 (Lang's testimony that the language in the CBA addressed the no-match letter issues). Indeed, in the General Counsel made clear reference to the pendency of grievances over the employees' suspensions (General Counsel's Brief at p. 6), further proof that the disciplines and the policies upon which the disciplines were based were set forth in the CBA (either expressly in the CBAs as with ARAMARK's Fenway and MIT locations, or within the managements' rights at each of the three locations). Either way, the policy is covered within the collective bargaining agreements and subject to the grievance arbitration procedures, proving that ARAMARK had already bargained over the policies and/or the ability, by management rights, to implement and enforce said policies subject to the grievance procedures. Therefore, it was well within ARAMARK's rights to enforce the no-match letter policy, subject to the grievance and arbitration procedure as set forth in each of the CBAs.

Second, the General Counsel inaccurately characterized ARAMARK's policy. The General Counsel alleged that ". . . Respondents continued implementation of the policy by suspending employees indefinitely for allegedly violating the policy." General Counsel's Brief at p. 3. To the contrary, ARAMARK's policy did not contemplate indefinite suspensions. As clearly set forth in the policy, the path to ending one's own suspension was clearly set forth in the policy and, therefore, was not "indefinite," as argued by the General Counsel. All an employee had to do to end his or her suspension was present evidence to ARAMARK that the employee was seeking to correct the documents already presented upon commencement of

employment. The policy was consistent with the negotiated language at ARAMARK's MIT and Fenway locations, and clearly within ARAMARK's managements' rights at each of these locations.

Finally, while the General Counsel lists fifteen (15) exceptions to the Judge's Supplemental Decision on Remand, it has cited no factual support for its claims, but rather argues that the conclusions were simply incorrect despite the clear and unrefuted evidence supporting the conclusions. For example:

- In Exception #7, the General Counsel argues that the Judge erred by finding that “the Union’s position on Respondents’ new no-match letter policy did not change by Respondents’ suspension of its implementation between November 2006 and January 2007.” This is conjecture and conclusion not supported by record testimony. *See* ARAMARK’s Brief, November 6, 2009, at pp. 17-19. Richard Ellis, ARAMARK’s Vice President of Labor Relations, testified regarding the bargaining that took place at the international level. Tr. at pp. 116-153. Mr. Ellis’s testimony was unrefuted by any witness.
- In Exception #s 8-11, the General Counsel argues that the Judge erred by finding that the Union’s bargaining position was not materially affected by ARAMARK’s temporary unilateral implementation of the policy and suspension of certain employees. In support, the General Counsel failed to cite to any record evidence to refute the Judge’s factual finding and Mr. Lang’s failure to testify that the alleged unfair labor practices and ARAMARK’s suspension of certain employees affected the Union’s position regarding ARAMARK’s policy.¹ Instead, the General Counsel argues that ARAMARK’s conduct must have had an impact, notwithstanding the lack of any factual support.
- In Exception #12, the General Counsel argues that the Judge erred by finding that “the Union did not cite the unfair labor practices as a reason, or even part of the reason for leaving the negotiations.” There is no citation to the record because there was no record evidence regarding this point.

¹ See requirements set forth in R&R, Sec. 102.46(b)(1)(iii).

- In Exception #13, the General Counsel argues that the Judge erred by finding that “the impasse reached was not tainted by unremedied unfair labor practices and that the subsequent implementation and enforcement of the Respondents’ no-match letter policy was lawful.” Again, despite the lack of a factual record to support its position, the General Counsel argues that the Board should “assume” that the matter was irrevocably tainted and that ARAMARK’s initial conduct precluded any good faith bargaining. The Judge’s finding, including the Union’s failure to cite as the reason (or even a reason) for ending the bargaining over the policy, reflects the evidence in the record on this point. *See* ALJ Supplemental Decision on Remand at p. 6.

The General Counsel seeks to rely on argument in the absence of a supported factual record. As such, the General Counsel’s Exceptions should be dismissed.

CONCLUSION

For the reasons set forth herein, as well as in ARAMARK’s Brief in Support of the Exceptions of Respondents to the Supplemental Decision on Remand, ARAMARK respectfully requests that the Board grant ARAMARK’s Exceptions and issue an order dismissing this case with prejudice.

Respectfully Submitted,

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Dated: *December 8, 2009*

CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused a copy of Respondents' Answering Brief in Response to the General Counsel's Exceptions and in Further Support of Respondents' Exceptions to the Supplemental Decision on Remand to be served by First Class Mail and e-mail upon the following persons:

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Dated: *December 8, 2009*