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

BRIEF IN ANSWER TO THE EXCEPTIONS OF THE GENERAL COUNSEL AND THE CHARGING PARTY

Michael D. Keffer
ARAMARK
ARAMARK Tower
1101 Market Street
Philadelphia, PA 19107
(215) 238-6107 (telephone)
(215) 238-3344 (facsimile)
keffer-michael@aramark.com

Table of Contents

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 Brief in support of their position that the National Labor Relations Board ("Board") should adopt the Recommended Order of the Administrative Law Judge over the Exceptions of the General Counsel and the Charging Party.[1]

I. STATEMENT OF THE CASE

All facts set forth below are directly drawn from or consistent with the Administrative Law Judge's Decision (ALJD) unless otherwise noted. Supportive citations to the record are provided where the General Counsel has excepted to a finding of the Administrative Law Judge or where citations might otherwise be helpful to the Board. Citations to the hearing transcript are designated as "Tr. at __."

A. Legal Context

The parties agree that this case is not about whether ARAMARK violated or complied with federal immigration or tax laws. However, the legal context in which ARAMARK operates is important background to this case. As the Administrative Law Judge noted, "these laws must be taken into consideration in this case."

From time to time, ARAMARK (and many other employers) receive "no-match letters" from the Social Security Administration ("SSA"), identifying employees whose names and Social Security Numbers ("SSN"), as reported by ARAMARK for federal tax purposes, do not match each other. In 2006, ARAMARK received no-match letters for its various corporate entities, examples of which were admitted as Exhibits R-3 and R-4. The initial letters provide

[1] The Charging Party has simply joined in the General Counsel's Exceptions. This Brief therefore focuses on the specific contentions of the General Counsel.

partial lists of SSNs only, and no mismatched names. In 2006, ARAMARK requested and received from SSA comprehensive lists of mismatched names and numbers. The pertinent lists were admitted as Exhibits R-5 and R-6. Over 4,400 ARAMARK employees appeared on the various lists ARAMARK received for its various corporate entities.

Although the SSA's no-match letters are written in fairly benign language, the identification of SSN no-matches are in fact an extremely serious matter, causing significant exposure for ARAMARK (or any other company in a similar position). Several federal statutes and regulations require ARAMARK to ensure that its employees have valid SSNs. See, e.g., 26 C.F.R. § 31.6011(b)-2 (requiring employee to provide SSN to employer on first day of employment, and requiring employer to record and utilize employee's SSN in appropriate records, returns, and forms). The consequences for an employer who ignores or permits incorrect SSNs are significant. For each incorrect SSN, the IRS is authorized to impose a $50 penalty. See Internal Revenue Service, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs (Publication 1586), at 2 (2004) (cited at ALJD, p. 6, lines 35-38). To put this penalty in proper context, in 2006 alone, ARAMARK's potential liability, based on 4,400 unmatched SSNs, was over $220,000.

Separate from the IRS penalties, but at least as important, is the potential liability the no-match letters create for ARAMARK under the Immigration Reform and Control Act of 1986 ("IRCA"). Section 1324a of IRCA provides as follows:

> (2) Continuing employment
>
> It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

8 U.S.C. § 1324a(2). Interpreting this statute, the Supreme Court of the United States wrote:

> [I]f an employer unknowingly hires an unauthorized alien, or if the alien becomes unauthorized while employed, the employer is compelled to discharge the worker upon discovery of the worker's undocumented status. § 1324a(a)(2). Employers who violate IRCA are punished by civil fines, § 1324a(e)(4)(A), and may be subject to criminal prosecution, § 1324a(f)(1).

Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137, 148 (2002).[2]

Federal courts have held that Section 1324a creates a constructive knowledge standard for employers, according to which "a deliberate failure to investigate suspicious circumstances imputes knowledge":

> Contrary to the argument … that the government has the entire burden of proving or disproving that a person is unauthorized to work, IRCA clearly placed part of that burden on employers. The inclusion in the statute of section 1324a(b)'s verification system demonstrates that employers, far from being allowed to employ anyone except those whom the government had shown to be unauthorized, have an affirmative duty to determine that their employees are authorized. This verification is done through the inspection of documents. *Notice that these documents are incorrect places the employer in the position it would have been if the alien had failed to produce the documents in the first place: it has failed to adequately ensure that the alien is authorized.*

New El Ray Sausage Co. v. U.S. Immigration & Naturalization Serv., 925 F.2d 1153, 1158 (9th Cir. 1991) (emphasis added) (cited at ALJD p. 6, lines 43-47). In a footnote, the Ninth Circuit added: "Although compliance with the paperwork procedures [at the hiring stage] establishes a good faith defense against a finding of unlawful hiring, 8 U.S.C. 1324a(a)(3), it should provide no defense against a violation of section 1324a(a)(2). While the hiring can be considered in good faith since the false nature of the documents was unknown, the continuing employment is done with the knowledge that the document is false." Id. at 1158 n.7. IRCA is relevant to no-

[2] Hoffman ultimately held that employees who are not authorized to work in the United States are not entitled to back pay or reinstatement even if their employer commits an unfair labor practice. Id. at 151-52. ARAMARK anticipates that this decision would have enormous importance if a compliance hearing became necessary in this case. It is ARAMARK's position that no compliance hearing should be necessary, because it committed no unfair labor practices.

match letters because the Department of Homeland Security ("DHS"), which, since 2003, has been responsible for enforcement of IRCA, takes the position that the receipt of a no-match letter puts an employer on notice of a potential violation of the immigration laws. See, e.g., Department of Homeland Security, Safe-Harbor Procedures for Employers Who Receive a No-Match Letter, 71 Fed. Reg. 34281 (June 14, 2006) (describing employers' already-existing obligations under IRCA when receiving a no-match letter and providing new safe harbor for avoiding liability).

B. Factual Background

1. ARAMARK's Operations at MIT, Hynes, and Fenway

ARAMARK provides managed services (including food service) internationally and throughout the United States at over 5,000 locations. (Tr. at 54-55, 118.) Among these locations are Massachusetts Institute of Technology ("MIT"), Hynes Convention Center ("Hynes"), and Fenway Park ("Fenway"). At each location, UNITE HERE Local 26 ("Local 26") represents food service employees. At all times relevant to this case, each of the three locations was covered by a separate, then-effective collective bargaining agreement. The substance of those collective bargaining agreements is described in greater depth in ARAMARK's Brief in Support of Cross-Exceptions.

2. ARAMARK's Social Security Number Verification Policy

ARAMARK has had a Social Security Number Verification Policy ("the Policy") since 2000. Although the policy has been revised since that time, the basic structure of the policy has remained constant:

- Upon receipt of a no-match letter, ARAMARK payroll attempts to identify the nature of the error.
- ARAMARK asks the employee to verify the information in its payroll system.

- If the information in the payroll system is incorrect, the correct information is verified (e.g., through production of a social security number card), entered into the system, and compared with the information provided by SSA.

- If the employee verifies that the information in the payroll system is correct, he/she is informed of the discrepancy and instructed to go to SSA to correct the discrepancy.

- Employees whose payroll information does not match the SSA's information after the steps outlined above are required to provide documentation that he/she has gone to SSA to correct the problem (i.e., a replacement card or documentation of corrective action). Employees who fail to do so are placed on unpaid suspension.

- Represented employees have several months to present a new social security card. Those who do not are terminated.

(Exhibit GC-17, second through eighth pages; see also ALJD, pp. 6-8.) These essential elements have remained constant since 2000. (Exhibits R-7, GC-22; see also ALJD, pp. 6-8.) Since 2005, represented employees have had 14 days to provide documentation that he/she has gone to SSA to correct the mismatch. ARAMARK gives represented employees two letters notifying them of their obligations under the Policy – an initial letter notifying them of the start of the 14-day period, and a second letter after seven days, letting them know that they have seven more days to avoid suspension.

ARAMARK acknowledges that its enforcement of the Policy was imperfect and sporadic prior to 2006. ARAMARK presently has no evidence that it enforced the Policy at Hynes, MIT, or Fenway prior to 2006. ARAMARK did enforce the policy at certain other locations.

3. Enforcement of the Policy in 2006

In 2006, ARAMARK determined that it would increase its efforts to enforce the Policy uniformly and corporate-wide. (Tr. at 131.) Because of the imperfect enforcement of the Policy prior to 2006, ARAMARK's Labor Relations Department decided to emphasize notification of international and local union leaders regarding the enforcement strategy and the terms of the Policy. (Tr. at 131-32.) On September 7, 2006, Vice President of Labor Relations Rick Ellis

conducted a teleconference with the Labor Relations Directors and Senior Directors who report directly or indirectly to him. (Tr. at 131-32.) Mr. Ellis instructed the Directors and Senior Directors to provide notice to all local union leaders whose members might be affected by the 2006 enforcement program, and to meet with anyone who requested a meeting on the topic. (Tr. at 132.) Ellis followed up the teleconference by issuing a protocol describing the strategy in represented locations. (Tr. at 132-33.) The new protocol was not a new policy but rather simply contained guidelines for enforcing the Policy in represented locations. (Tr. at 131-33; Exhibit GC-21.)[3]

In Boston, ARAMARK provided Local 26 with advance notice of its 2006 enforcement efforts. Beginning on September 5, 2006, ARAMARK officials at or responsible for each of the three locations notified Local 26 officials of their intent to begin enforcing the Policy at those locations. At each of the three locations, notice to the union preceded any enforcement actions – i.e., preceded the notification of employees of their appearance on a no-match letter and certainly preceded any suspensions. As outlined in greater detail in ARAMARK's Brief in Support of Cross-Exceptions, it is ARAMARK's position that Local 26 never requested bargaining regarding the Policy. Despite the Administrative Law Judge's findings to the contrary, he determined that ARAMARK's negotiations with the International Union as to ARAMARK's response to no-match letters had satisfied ARAMARK's obligation to bargain in good faith.

[3] The General Counsel's Brief in Support of Exceptions contains a misstatement of the Administrative Law Judge's finding as to ARAMARK's instructions concerning bargaining. At page 10, lines 15-16 of the Decision, the Administrative Law Judge found that an ARAMARK official at MIT (Megan King) told Local 26 that "she's being told by the corporate office that she has to follow the policy she's laying out." (Tr. at 26.) She did not state that she had been instructed not to bargain, as the General Counsel's Brief erroneously states. Indeed, Labor Relations Director Ted Bennett, not King, had responsibility for collective bargaining at MIT. (Tr. at 29.) The unrebutted evidence regarding ARAMARK's corporate-level instructions regarding *bargaining* – i.e., Ellis' testimony described above – is found at page 131, line 21 through page 132, line 11 of the hearing transcript.

ARAMARK supports that finding, and therefore the remainder of this Statement of Facts will focus on those negotiations with the International Union.

4. Negotiations with the International Union

In the Fall of 2006, as ARAMARK officials with responsibility for the three locations notified Local 26 of the Policy enforcement efforts, Ellis concurrently notified his counterparts at the UNITE HERE International Union of those efforts. (Tr. at 132.) Ellis notified first Kurt Edelman, UNITE HERE International Director, and then Jim Dupont, who was Mr. Edelman's superior.[4] Edelman and Dupont requested bargaining. (Tr. at 135.) Consistent with his instructions to his Labor Relations Directors, Ellis obliged the International's request. (Tr. at 135.) As is undisputed, and as the Administrative Law Judge found, "UNITE HERE's International Constitution authorizes representatives of the International Union to bargain and reach agreements on behalf of the local unions. Any agreement Ellis and the International Union might have reached would have been binding on the local Union in this case." (ALJD, page 12, lines 6-9; Exhibit R-1.)

Over the next several months, ARAMARK and the International bargained over the no-match issues. (Tr. at 133-36.) Ellis stopped any enforcement of the Policy while discussions were pending. (Tr. at 135.) On January 8, 2007, Ellis and Dupont met face-to-face and exchanged positions for about two hours. (Tr. at 135-36.) Their efforts to work out an agreement included the discussion of specific language. (Tr. at 135.) On January 25, 2007, Dupont notified Ellis that there would be no resolution to the matter, and Ellis restarted

[4] ARAMARK excepts to the Administrative Law Judge's finding that Ellis first notified the International Union in *late* September 2006. (Cross-Exception 4.) Ellis' *unrebutted* testimony was that he called Edelman "around September 12." (Tr. at 132.) The Administrative Law Judge's finding is not decisive to his conclusions, which are supportable regardless of when in September ARAMARK first notified the International Union of its intentions. ARAMARK's notifications to both Local 26 and the International Union of its intention to enforce the policy unquestionably preceded any enforcement efforts.

ARAMARK's enforcement of the Policy. (Tr. at 135-36.) The Administrative Law Judge quoted and accepted completely Ellis' unrebutted testimony on these negotiations. (ALJD, p. 12, lines 1-22; p. 15, lines 30-46.) Indeed, no other witness at the hearing provided any testimony on this issue.[5]

5. Response to Local 26's Requests for Information

On September 21 and 29, 2006 and October 7, 2006, Local 26 requested nine categories of information related to ARAMARK's response to no-match letters. Local 26's requests were identical to those sent by UNITE HERE local unions across the country and by the International Union itself. The requested categories are set forth in full in the Administrative Law Judge's Opinion and in Section III.B.3 below.

Despite the fact that ARAMARK has thousands of locations across the country, the requests, on their face, were not limited to ARAMARK locations employing Local 26 members. Because of the nationwide scope of the requests made by Local 26 and numerous other UNITE HERE locals, Ellis discussed the requests by telephone with DuPont. DuPont requested that ARAMARK provide information to the International, with copies to each local union to the extent the information pertained to that local. (Tr. at 138.) ARAMARK complied with that request. ARAMARK determined that it could not comply completely with all the requests as drafted, due to the number of employees in the company and the number impacted by the no-match issue. (Tr. at 138.) However, rather than refusing Local 26's requests altogether, ARAMARK endeavored to provide the International Union and its affiliates with (a) all the

[5] The General Counsel's Exceptions 1, 2, 4, and 5 seem to dispute the Administrative Law Judge's factual findings on the points set forth above. These Exceptions are not clearly pursued in the General Counsel's supporting Brief and therefore may be considered abandoned. In any event, they are unfounded, as reference to pages 132-36 and 143-45 of the hearing transcript makes clear. In these pages, Ellis's testimony provides the only evidence in the record on the national bargaining between ARAMARK and UNITE HERE. Any challenge to the Administrative Law Judge's findings in support of that testimony are therefore challenges to his credibility evaluation, and again, such a challenge is completely unsupported and unsupportable.

information necessary to understand ARAMARK's policy, and (b) lists of all affected employees within each local. Ellis advised DuPont of the information ARAMARK intended to produce, and then produced it in November and December 2006. (Tr. at 138; Exhibits GC-10, GC-17, GC-19.) As explained in the letters to Dupont, ARAMARK produced the following information:

- its Social Security Number Verification Policy;
- sample letters informing employees of the no-match letter and instructions to go to SSA;
- the 2006 no-match letter from SSA; and
- a list of employees out of compliance with the Policy due to their failures to provide evidence that they had begun the processing of correcting the SSN mismatch.

(Exhibits GC-10, GC-17, GC-19.) Ellis copied Local 26 Vice-President Brian Lang on the letters that concerned MIT, Hynes, and Fenway and provided copies of the documents listed therein. Lang acknowledges that he received the information from Ellis.[6]

To date, Dupont has voiced no objection to ARAMARK's response to the information requests. As noted above, Dupont had the authority to speak for Local 26 on this matter. Whether or not the local affiliates had any right to object to the deal arranged between Ellis and Dupont, only two (Local 26 and one other) did so. (Tr. at 139.)[7] Lang wrote Ted Bennett, Sr. Labor Relations Director with responsibility for MIT, a letter objecting to Ellis' response, and Bennett subsequently spoke with Lang about the response. Bennett asked Lang what additional

[6] As with Exceptions 1, 2, 4, and 5, the General Counsel's Exceptions 9 and 10 are effectively not advanced in the Brief in support thereof, and they are also unsupportable. Again, Ellis' testimony on these points, found at pages 136-39 of the hearing transcript, are the only evidence in the record on ARAMARK's discussions with the International Union over the information requests. Any challenge to the Administrative Law Judge's credibility determinations are improper and unsupported.

[7] A local affiliate in Washington State filed an unfair labor practice charge that the Board dismissed. (Tr. at 139.)

documents he would like from ARAMARK, and by his own admission, Lang was unwilling to offer any compromise:

> …[H]e said well what information exactly do you want. I said I want exactly the information that was on the original information request and he said can't you narrow it down. I said no and that's where it was left.

(ALJD, p. 13, lines 1-3; Tr. at 34.) Given the nature of the requests and Lang's unyielding position, ARAMARK decided it could not comply with Lang's uncompromising position. (Tr. at 159.)

II. QUESTIONS PRESENTED BY THE GENERAL COUNSEL

Did the ALJ err when he concluded that Respondents did not violate Section 8(a)(5) and (1) of the Act when they changed their no-match letter policy and suspended 15 employees pursuant to the change? Suggested answer: NO.

Did the ALJ err when he concluded that Respondents did not violate Section 8(a)(5) and (1) of the Act when they refused the Union's request for Respondents' communications with the SSA and DHS regarding no-match matters, and Respondents' internal documents on current and previous no-match policies? Suggested answer: NO.

III. ARGUMENT

The Board should deny the exceptions of the General Counsel and should affirm the findings, conclusion, and recommended order of the Administrative Law Judge. ARAMARK did not violate Section 8(a)(5) of the National Labor Relations Act ("the Act" or "the NLRA") either by unilaterally implementing terms and conditions of employment without affording the union the opportunity to bargain or by failing to furnish information to which it was entitled. ARAMARK addresses these claims in turn.

A. ARAMARK Engaged in National Bargaining with UNITE HERE in Satisfaction of its Obligations Under Section 8(a)(5) of the Act.

As the Administrative Law Judge's opinion noted, "[b]argaining with the International rather than the individual locals [made] perfect sense as the changes were taking place nationwide and would affect all of the International Union's locals at ARAMARK facilities." (ALJD, p. 15, lines 48-50.) Such national bargaining was not an idea conjured up by ARAMARK. UNITE HERE's Constitution expressly contemplates such bargaining and expressly authorizes the International Union to reach agreements on behalf of the local unions. The General Counsel does not seem to dispute any of these points.

Instead, the General Counsel incorrectly argues that national bargaining could not cure any unlawful unilateral implementation that preceded such bargaining. Assuming (for purposes of this Brief only) that ARAMARK initially implemented its policy without the notice and bargaining required by the Act, long-standing Board precedent supports the Administrative Law Judge's conclusion that ARAMARK's subsequent bargaining and freeze of its process cured this error. For instance, in Nocona Boot Co., 116 NLRB 1860 (1956), the employer unilaterally implemented a wage increase without bargaining with the union. The employer "candidly conced[ed] the impropriety of its unilateral action," but "asked to be absolved of liability" on the grounds that it subsequently rescinded its action and engaged in good faith bargaining with the union. Id. at 1875. The Board acknowledged that good faith generally was not a defense upon which employers should rely, but nonetheless refused to find an unfair labor practice in the circumstances of the case. Id. at 1861, 1875. The unilateral implementation was isolated and did not "appear to have been engaged in with any purpose of discredit [sic] the Union or undermine its authority or prestige." Id. at 1875. The Board also emphasized the willingness of the employer to engage in bargaining with the union following the unilateral implementation. Id.;

see also Whiting Milk Co., 145 NLRB 1458 (1964) ("Even were it found that the acts complained of constituted a *per se* violation, Respondent's subsequent conduct provides no substantial basis for inferring any disposition on the Respondent's part to engage in like conduct in the future, even though not ordered to cease and desist therefrom, but does reflect a willingness on its part to continue harmonious bargaining relations with the Union.").

The Administrative Law Judge's finding of a cure by ARAMARK is well-founded. Before enforcement of the no-match policy commenced, Ellis notified the International Union of ARAMARK's intentions. He instructed his subordinates to do the same on the local level. When the International requested bargaining, a national approach that made abundant practical sense, Ellis readily obliged. Enforcement of the policy was halted, and negotiations began. At that point, no suspensions had occurred at Fenway, and any previous enforcement efforts at the other two Boston locations could have been undone or revised if negotiations or other events (e.g., an employee's production of a valid social security number) had warranted. Negotiations continued for several weeks, positions were conveyed, and specific language proposals were exchanged. Negotiations concluded only when the International Union's representative declared that an agreement could not be reached, apparently as a result of the parties' irreconcilably opposed views of ARAMARK's legal obligations. Taft Broadcasting Co., 163 NLRB 475, 478 (1967) (holding that impasses is reached when "good-faith negotiations have exhausted the prospects of concluding an agreement"). Only at this point did ARAMARK lift the freeze and resume enforcing the policy. All these facts are clear indicia of an employer committed to negotiating in good faith with a union that requested bargaining.

Again, ARAMARK submits that it complied with its obligations on both a national and local level. Nonetheless, the Board need not accept (or even reach) ARAMARK's position on

the local issues in order to adopt the Administrative Law Judge's findings and conclusions on the national level. On that issue, the decision is well-founded both in fact and in law.

B. ARAMARK Responded to Local 26's Information Requests in Compliance with Section 8(a)(5) of the Act.

ARAMARK met its obligation to provide relevant information to Local 26 regarding SSN no-match issues. "An employer has the statutory obligation to provide, on request, relevant information that the union needs for the proper performance of its duties as collective-bargaining representative." Disneyland Park, 350 NLRB No. 88, slip op. at 2 (Sept. 13, 2007). Where the request concerns wage, hours, and terms and conditions of employment for employees in the bargaining unit, that information is presumptively relevant. Id.; Southern California Gas Co., 344 NLRB No. 8 (2005). However, where the requested information concerns matters other than wages, hours, or terms and conditions, or where the information concerns employees outside the bargaining unit, the information is not presumptively relevant to the union's performance as bargaining representative, and the burden is on the union to demonstrate the relevance. Id.

The General Counsel does not appear to challenge the legal standard articulated by the Administrative Law Judge and set forth above. Yet neither the General Counsel nor Local 26 has yet advanced any convincing theory as to why Local 26 needed more than the information provided to it in order to perform its duties as collective bargaining representative at MIT, Hynes, and Fenway.

1. ARAMARK Satisfied Its Obligation to Furnish Information By Reaching Agreement with the International Union Regarding the Information Requests.

The parties agree, and Respondent's Exhibit 1 (UNITE HERE's International Constitution) makes clear, that the UNITE HERE International Union has the authority to speak, and reach agreements, on behalf of Local 26. Ellis testified that he received virtually identical

information requests from UNITE HERE International and local affiliates across the country, including Local 26. The International took control over negotiations as to the scope and manner of ARAMARK's response to the requests, which clearly had become a national issue. Ellis advised the International Union what he would produce, produced it to the International (with copies of the relevant information to each local affiliates, including Local 26), and never heard a single objection from the International.

In view of the nationwide relationship between ARAMARK and the International and the clear right of the International to negotiate and reach agreements on behalf of Local 26, it is clear that ARAMARK met its obligation to furnish information to Local 26. A decision to the contrary would allow the International and its local affiliates to play games with ARAMARK (or for the local affiliates to play games with both ARAMARK and the International), whereby no deals are really ever final and no nationwide discussions are ever meaningful. ARAMARK submits that this result would be not only contravene the Act, but also common sense and practical necessity.

2. Each of Local 26's Information Requests Were, On Their Face, Clearly Irrelevant to its Representational Activities and/or Clearly Overbroad.

Even if one ignores the national agreement on ARAMARK's response to information requests, ARAMARK's response complied with the law and allowed Local 26 to perform its bargaining duties. Despite Local 26's knowledge that ARAMARK is a national employer with hundreds of thousands of employees, Local 26's information requests plainly sought information (a) regarding ARAMARK employees outside the bargaining unit and (b) information held by ARAMARK that had nothing to do with terms and conditions for bargaining unit members. The Administrative Law Judge's findings on these points are completely supported by the record and by logic.

ARAMARK did not understand and should not have understood Local 26's requests to be limited to the three locations in question. On their face, the requests were not so limited. When ARAMARK inquired as to whether Local 26 really wanted all the documents it appeared to be requesting, Lang would not budge. In testimony directly quoted by the Administrative Law Judge, Lang stated:

> [H]e said well what information exactly do you want. I said I want exactly the information that was on the original information request and he said can't you narrow it down. I said no and that's where it was left.

(ALJD, p. 13, lines 1-3; Tr. at 34.) Lang also acknowledged in his testimony that Local 26 had no legitimate interest in no-match information concerning ARAMARK locations that did not employ Local 26 members. (Tr. at 71-72.) So when ARAMARK ultimately produced location-specific information to Local 26, it was not, as the General Counsel suggests, evidence that it understood Local 26's requests to be location-specific. It was instead reflective of ARAMARK's good-faith effort to provide as much information as it could, in the face of an inflexible union position.

Amazingly, the General Counsel seeks to turn around the interaction between ARAMARK and Local 26, advancing the theory that ARAMARK failed to make sufficient efforts to engage Local 26 in narrowing the information requests. The General Counsel even cites a case, Keauhou Beach Hotel, 298 NLRB 702 (1990), in support of the proposition that an employer faced with overbroad or ambiguous information requests "must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information". That is *precisely* what ARAMARK did! According to Lang's own testimony (quoted above), Bennett asked exactly what information (in addition to what he had already received) Lang wanted. Lang replied that he wanted everything – that *no* narrowing was possible. This was not

a disagreement over the nature or extent of narrowing. This was a discussion that ended almost as soon as it started, due to Lang's inflexible position. As Keauhou suggests, ARAMARK not only inquired attempted to clarify and narrow, but also responded to the requests to the extent they asked for relevant information, as set forth below.

3. ARAMARK Provided Information That More Than Adequately Enabled Local 26 to Perform Its Bargaining Duties.

In light of the foregoing, ARAMARK will address each request as it appears on its face, with the understanding that Lang was unwilling to narrow any request, and with the consequent understanding that the bulk of the requested information did not concern terms and conditions of employment for members of the three bargaining units. Before doing so, however, it is important to remember what ARAMARK *did* provide to Local 26. ARAMARK provided information (a) identifying each Local 26 employee affected by the Policy enforcement efforts in 2006 and (b) describing the Policy and how it would be implemented (i.e., the Policy itself, a sample no-match letter from SSA, and templates of the letters that affected employees would receive). The information ARAMARK provided was more than enough to enable Local 26 to represent its employees effectively, as the International Union and virtually every other UNITE HERE local affiliate in the country acknowledged by accepting ARAMARK's document production without objection or follow-up requests.

1. A copy of any and all documents reflecting communications, whether written, oral or electronic, between the Social Security Administration ("SSA") and ARAMARK between January 1, 2002 and the present, regarding the social security numbers of employees of ARAMARK.

This request is not related to wages, hours, or terms and conditions of employment for bargaining unit employees at MIT, Hynes, or Fenway, and the burden was therefore on Local 26

(and now the General Counsel) to demonstrate its relevance. By its terms, the request would ask for documents reflecting, for instance, a phone call or e-mail between SSA and ARAMARK at ARAMARK's headquarters in Philadelphia, a regional corporate office in Illinois, or a field office in Denali Park in Alaska or Coors Field in Denver or the state correctional system in Florida. Moreover, even if the request had been limited to communications by management at MIT, Hynes, or Fenway, it is impossible to conceive how this information would assist Local 26 in representing bargaining unit employees.

In an attempt to support this and a number of other requests, Lang testified that Local 26 wanted to see whether the government's instructions to ARAMARK or ARAMARK's policy had changed. First, if that was the extent of Lang's need for the information, a simple look at the Policy (which ARAMARK provided to Local 26) and a simple request for copies of instructions from the government would have sufficed.

Moreover, as the Administrative Law Judge correctly recognized, a historical look at ARAMARK's practices would not assist Local 26 in representing employees in 2006. The General Counsel and Local 26 repeatedly return to the supposed need for historical information, but time and again, they fail to answer the fundamental question of how communications with the government in 2002 or 2003 might assist Local 26 in representing employees or evaluating possible grievances in *2006*. According to Local 26's own version of events, it fully understood, and was quite content with, ARAMARK's approach to no-match letters before 2006. Nothing that ARAMARK did with no-match letters before 2006 had any adverse effect on the terms and conditions of employment for Local 26 members at the three locations; that history was a non-issue. The issue for Local 26 to evaluate *in 2006* was what ARAMARK was doing *in 2006* and

whether it violated the applicable collective bargaining agreements. Local 26 clearly had ample information to make those determinations.

At various points, the General Counsel and Local 26 seemingly have taken the alternative position that ARAMARK's motivations for its actions, or perhaps its understanding of instructions from the government, might have justified Local 26's requests. But again, it is incomprehensible how that information might have helped Local 26 perform its bargaining functions. ARAMARK's motives were unimportant. The federal government's instructions (other than those issued in 2006, which Local 26 received) were unimportant. What was important and relevant was whether ARAMARK was complying with the collective bargaining agreement, and obscure communications between ARAMARK and SSA had nothing to do with that issue. Local 26 knew which employees were implicated by 2006 no-match letters and what ARAMARK planned to do. There is still no persuasive justification for why Local 26 needed to know more than that.

2. A copy of any and all documents reflecting communications, whether written, oral or electronic, between the Department of Homeland Security ("DHS") and ARAMARK between January 1, 2002 and the present, regarding the social security numbers of employees of ARAMARK.

See response above to Request No. 1.

3. A copy of any and all social security "no match" letters received by ARAMARK between January 1, 2002 and the present.

This request is arguably related to conditions of employment for bargaining unit employees at MIT, Hynes, or Fenway, but only an extremely small portion of the information responsive to the request actual concerns those employees. A large majority of the information

concerns employees outside the bargaining unit, and the burden was therefore on Local 26 (and now the General Counsel) to demonstrate its relevance. As Exhibits R-3 through R-7 (and Ellis' testimony) demonstrate, the no-match letters ARAMARK receives are paper copies, not electronic files. They are divided only by corporate entity. They are not divided by specific location. They are not separated by local union or even international union. They do not differentiate between union-represented and unrepresented employees. Nonetheless, by Lang's own admission, Local 26 wanted everything it requested on the face of the letters – i.e., the entire contents of the no-match lists. By complying with Local 26's request, ARAMARK would have had to disclose the names and reported SSNs of thousands of employees, when only a handful were Local 26 members. This is plainly absurd.

Even if Lang had been more willing to compromise on the scope of his requests for no-match letters, it would have been impossible to provide each local union with original no-match letters identifying only their members. Again, the letters simply are not broken down that way. It also would have been extremely burdensome, in fact prohibitively so, to go through the 4400 names on the lists and, for each local union, redact all but the few members of that local union appearing on the lists. Doing so in four days in response to the General Counsel's subpoena for just this single local union was an enormous undertaking, and was achieved only because it needed to be done for just one local. To repeat this exercise for the entire corporation, for four years' worth of no-match letters, would have been preposterous, particularly in view of the minimal benefit to the various local unions.

Local 26 now has received, by virtue of ARAMARK's response to the General Counsel's subpoena, the no-match letters covering MIT, Hynes, and Fenway in 2006 (with all the names

and social security numbers of employees outside the bargaining unit painstakingly redacted).[8] Even if it were practical to gather the same information for the years 2002-05, it is difficult to see what relevance the historical information would have had for Local 26 in 2006. By virtue of ARAMARK's informal communications and its response to the information requests as directed by the International union, Local 26 knew which of its members were affected by the Policy in 2006 and how they would be treated. It needed nothing more to effectively represent its members in 2006. There is no reason for the Board to order the production of the irrelevant historical information, particularly given the difficulty of gathering and producing it and the breadth of information Local 26 already received by virtue of the General Counsel's subpoena.

4. A copy of any and all documents that ARAMARK sent to the SSA or DHS between January 1, 2002 and the present in order to verify employees' social security numbers.

See Response above to Request No. 1.

5. A copy of any and all documents created or received by ARAMARK between January 1, 2002 and the present, regarding internal company policies or procedures for responding to social security "no match" letters.

ARAMARK provided its current policy as requested. It is difficult to see how the earlier, now-inoperative 2002 policy would have assisted Local 26 in representing its members in 2006. Nonetheless, Local 26 now has a copy of the 2002 policy by virtue of ARAMARK's response to the General Counsel's subpoena.

[8] As ARAMARK's counsel represented at the hearing in this case, it was impossible for ARAMARK to retrieve and produce no-match letters for 2002-05 in the four days the General Counsel's subpoena afforded. In any event, the General Counsel's case did not suffer in any conceivable way, given ARAMARK's stipulations and the evidence presented through testimony and documents. Nor, for the reasons provided above, would Local 26 benefit from receiving that information now.

6. A copy of any and all documents created or received by ARAMARK between January 1, 2002 and the present, regarding internal company policies or procedures for verifying employees' social security numbers with the SSA.

See Response above to Request No. 5. By way of further response, Local 26 already has all responsive documents.

7. A copy of any or all documents reflecting ARAMARK's oral communications with the SSA, including the SSA's Employee Verification Service, between January 1, 2002 and the present regarding verification of the social security numbers of employees of ARAMARK.

See Response above to Request No. 1.

8. A copy of any and all documents asking, or reflecting an oral request that, ARAMARK report back to the SSA regarding social security "no matches" between January 1, 2002 and the present.

See Response above to Request No. 1. By way of further response, ARAMARK provided to Local 26 a sample no-match letter received in 2006, and ARAMARK has received no instructions beyond what was contained in that letter and virtually identical letters in 2002-06.

9. A copy of any and all registration forms submitted by ARAMARK to the SSA between January 1, 2002 and the present to register for the SSA's Employee Verification System.

See Response above to Request No. 1.

IV. CONCLUSION

ARAMARK respectfully requests that the Board adopt the Recommended Order of the Administrative Law Judge.

Respectfully Submitted,

/s/ Michael D. Keffer
Michael D. Keffer
ARAMARK
ARAMARK Tower
1101 Market Street
Philadelphia, PA 19107
(215) 238-6107 (telephone)
(215) 238-3344 (facsimile)

Dated: July 25, 2008

CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused a copy of the foregoing Brief in Answer to Exceptions to be served by U.S. Mail upon the following persons:

Robert J. DeBonis
National Labor Relations Board
Region 1
10 Causeway Street, 6h Floor
Boston, MA 02222-1072

Michael T. Anderson
Davis, Cowell & Bowe, LLP
8 Beacon Street, 4th Floor
Boston, MA 02108

/s/ Michael D. Keffer
Michael D. Keffer

Date: July 25, 2008

TABLE OF AUTHORITIES

National Labor Relations Board Cases

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Statutes

Regulations