

**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

**REPLY BRIEF IN SUPPORT
OF CROSS-EXCEPTIONS**

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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 Reply Brief in support of their Cross-Exceptions to the May 13, 2008 Decision of the Administrative Law Judge.

In all ways but two, ARAMARK is satisfied to stand on the arguments set forth in its initial Brief in Support of Cross-Exceptions. ARAMARK makes the following two points simply to clarify or re-emphasize the evidence on record and the nature of the Cross-Exceptions.

I. THE RECORD SHOWS THAT ARAMARK DID NOT IMPLEMENT THE NO-MATCH POLICY UNTIL AFTER PROVIDING NOTICE TO LOCAL 26.

Part II.B of the General Counsel’s Brief in Answer to Respondents’ Cross-Exceptions, like the Administrative Law Judge’s Decision, contends that ARAMARK began implementing the social security number no-match policy (“the Policy”) even before finalizing the Labor Relations protocol that guided implementation. This is inaccurate, or at the very least incomplete. As set forth in ARAMARK’s initial Brief, the Policy was in place for quite a while prior to summer 2006. In that summer, ARAMARK determined to enforce the Policy corporate-wide. (Tr. at 131-32.) On September 5, 2006, the first of three locations involved in this case, Hynes Convention Center (“Hynes”), notified Local 26 of its intent to enforce the Policy. (Exhibit GC-6.) On September 7, 2006, the Labor Relations Department finalized its protocol, which was merely a guide for communications with local union officials and enforcement of the Policy in unionized locations. (Tr. at 132-33.) The Policy was already in place; the protocol clearly was intended solely as an aid for Labor Relations professionals. The General Counsel and the Administrative Law Judge make entirely too much of the importance of the protocol.

The Policy cannot be said to have been “implemented” until ARAMARK began sending employees letters regarding their mismatched names and social security numbers. Before that time, the Policy had no impact on terms or conditions of employment and therefore cannot be said to have been implemented. By the time the implementation process truly began on September 21, 2006 (Exhibit GC-8), Local 26 and UNITE HERE International Union had ample notice of the policy and ARAMARK’s intentions. This is the key point: *notice preceded enforcement* – by more than two weeks, in fact. Local 26 had ample time to make a request for bargaining between ARAMARK’s initial notice and its initial enforcement efforts, and, as outlined in ARAMARK’s initial Brief, Local 26 simply did not do so.

II. THE ADMINISTRATIVE LAW JUDGE ERRED IN FAILING TO FIND THAT LOCAL 26 WAIVED ITS RIGHT TO COLLECTIVE BARGAINING THROUGH THE COLLECTIVE BARGAINING AGREEMENTS AT MIT AND HYNES.

Part III.A of the General Counsel’s Brief asserts in great detail that the Policy was inconsistent with the collective bargaining agreements at MIT Faculty Club (“MIT”) and at Hynes. The Brief advances the position that the Policy violated the contracts’ language and that the parties had agreed to a different response to no-match letters in their contract negotiations. Among other things, it speaks to what the parties “contemplated when they negotiated the immigration and management language” in the two contracts. Needless to say, ARAMARK has a viewpoint that is different from that of Local 26 and the General Counsel and contends that its Policy is in complete compliance with the contracts.

For purposes of this case, however, the more salient point is that the issue of ARAMARK’s response to the receipt of no-match letters “was fully discussed and consciously explored and that the union intentionally relinquished its right to further bargaining in this area.” Provena Hospitals, 350 NLRB No. 64, slip op. at 4-5, 8 (Aug. 16, 2007). Even the General Counsel’s Brief, in its discussion of what the parties contemplated at the time of contract

negotiations, seems to concede this point.¹ If Local 26 believed in September 2006 that ARAMARK was violating the contract, it could have advanced that argument through grievance and arbitration. Indeed, that seemed to be the direction in which this dispute was headed when Local 26 initially complained to ARAMARK about contract compliance (but did not request bargaining). (Tr. at 157-59.) Again, the key point is not whether enforcement of the Policy was consistent with the collectively bargained language, but that the issue already had been fully explored and decided in collective bargaining. On the latter point, there can be no doubt. In these circumstances, Local 26 waived its right to additional bargaining in 2006.

III. CONCLUSION

ARAMARK respectfully repeats its position that, even if the Board grants the Exceptions of the General Counsel and the Charging Party, it should also grant ARAMARK's Cross-Exceptions and adopt the Recommended Order on those alternative grounds.

Respectfully Submitted,

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Dated: August 26, 2008

¹ As noted in ARAMARK's initial Brief, this is not a Section 8(d) case, in which the issue is whether the employer modified the contract or had a "sound arguable basis" for its interpretation of the contract. Bath Iron Works Corp., 345 NLRB 499, 502 (2005). The issue here is whether ARAMARK implemented a change without bargaining, which, for the reasons discussed herein and in ARAMARK's initial Brief, it did not do.

CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused a copy of the foregoing Reply Brief in Support of Cross-Exceptions to be served by e-mail and U.S. Mail upon the following persons:

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Date: August 26, 2008