Aramark Corporation *and* Florida Public Employees Council 79, AFSCME, Petitioner. Case 12–RC–8041

February 28, 1997

ORDER DENYING REVIEW

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The Board has delegated authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent parts of which are attached). The request for review is denied as it raises no substantial issues warranting review. In denying review, the Board reaffirms its holding in *Management Training Corp.*, 317 NLRB 1355 (1995). The facts here reinforce the soundness of that decision. In this regard, we note that if the Board were to decline to assert jurisdiction, as the Employer urges, the employees at issue would be left without any opportunity to be represented. This is so because the State of Florida Public Employees Relations Commission has ruled that it is precluded from asserting jurisdiction over these employees on the ground that they are not public sector employees, i.e., employees of Duval County. The employees are employed by a private employer, the Employer herein, which is covered by our Act and thus squarely within our jurisdiction, as *Management Training* holds. Moreover, Florida does not have a labor relations board similar to the NLRB that might assert jurisdiction here. Cf. *Operation & Maintenance v. Labor Relations Commission*, 405 Mass. 214, 539 N.E.2d 1030, 132 LRRM 2634 (1989).

MEMBER HIGGINS, dissenting in part.

I would grant the Employer's Request for Review to consider further the issue of whether the Board should adhere to *Management Training Corp.*, 317 NLRB 1355 (1995).

APPENDIX

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, 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 Regional Director Rochelle Kentov.

Upon the entire record in this proceeding,[1] I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. Although the Employer[2] concedes that its business operations satisfy the Board's discretionary jurisdictional standards and statutory definitions within the meaning of Section 2(6) and (7) of the Act,[3] it contends that Duval County retains such a degree of control over the wages, benefits, and other terms and conditions of employment that the Board should decline to assert jurisdiction over the Employer. Essentially, the Employer contends that the Board should apply the *Res-Care, Inc.*, 280 NLRB 670 (1966), test for asserting jurisdiction over an employer with close ties to an exempt governmental entity. The Employer asserts that the Board's test in *Management Training Corp.*[4] is wrong and unenforceable.

The Petitioner argues that since there is no question that the Employer satisfies the Board's *Management Training* test, and the record evidence provides no other basis to decline jurisdiction, the Board must assert jurisdiction over the Employer herein.

The Employer is a food service provider with operations nationwide. The operation sub judice is the Duval County School Board food service. The food service operation involves the preparation and service of food items at all of the Duval County Schools which are located in and around Jacksonville, Florida. There are 148 schools in the Duval County School System and the Employer manages the food service operations at each of these schools and at the School Board's administration building. At 74 of these schools there is a full service kitchen. The other 74 schools are considered satellite schools and have the food delivered to them via truck from other locations. The Employer and the School Board entered into a contract for the Employer to manage all of the food service operations of the school district effective July 1, 1990, and the contract was renewed yearly until June 30, 1995. Thereafter, the city of Jacksonville issued a request for bids for a new contract to become effectively July 1, 1995. The Employer was awarded a 1-year contract, which was renewed for a 1-year period beginning July 1, 1996. Employees in the food service operation as of July 1, 1990, remain Duval County employees, retaining full civil service rights and are in a public sector collective-bargaining unit represented by the Petitioner herein. All food service employees hired after July 1, 1990, are employees of the Employer. These employees do not have civil service status, nor are they represented in a public sector collective-bargaining unit.

The top official for the Employer is the district manager. The district manager has overall responsibility for fulfilling the Employer's contractual obligation to manage the School Board's food service. Reporting to the district manager is a

[1] The briefs of the parties have been carefully considered.

[2] The Employer, Aramark Corporation, is a successor employer to ARA Services, Inc., which was the Employer in Case 12–RC–7738. The record indicates that the only difference between the employers is a name change.

[3] The Employer is a Delaware corporation with an office and places of business located in Jacksonville, Florida, and is engaged in the nationwide distribution and sale of food and related services at various institutions throughout the United States, including managing the food service operation of the Duval County School Board. During the past 12 months, the Employer derived gross revenues in excess of $500,000 from its business operations and purchased and received at its Florida locations goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Florida.

[4] 317 NLRB 1355 (1995).

food service director, who in turn supervises two assistant food service directors. All of the above managers are employed by the Employer. There are 10 food service supervisors[5] reporting to the assistant food service directors. Each supervisor has between 5 and 15 schools assigned to him or her to directly oversee. Nine of these supervisors are employed by the Employer and one is a Duval County employee. Reporting to the supervisors are school managers,[6] who are responsible for the full service kitchens. There are 73 lead persons (also known as lead food service assistants) who coordinate the serving of food shipped from other locations.[7] There are three main categories of employees working in each cafeteria: food service assistants, cooks, and cashiers. The cooks prepare the food and cashiers operate the cash register and receive money. Food service assistants perform all of the remaining duties, including assisting the cooks and cashiers. There are also truckdrivers who deliver food to the satellite schools. They are considered food service assistants by the Employer. Both Duval County employees and employees of the Employer occupy the positions of cook, cashier, and food service assistant and these employees work side-by-side at the various sites. There are approximately 351 Duval County employees, while the Employer has 253 full-time employees, 184 part-time employees, and 122 on-call employees.[8] The Employer has the right to interview, hire, set initial work assignments, discipline, and discharge employees.

The Employer's budget is subject to a line-by-line review by the School Board. The School Board can change budgetary items without consultation with the Employer. All personnel decisions, although initially made by the Employer, are subject to the review and approval of the School Board. All salaries, raises, and benefits are subject to the approval of the School Board. The School Board reserves the right to approve any changes in the configuration of the Employer's health insurance plan. All expenditures made by the Employer are billed directly to the School Board on a weekly basis, and thus all funds for expenditures come from the School Board. The School Board retains the right to approve any collective-bargaining agreement entered into by the Employer. In November 1996, the School Board required the Employer to submit for approval a handbook for all of the Employer's employees.

[5] There is no dispute regarding the supervisory status of these individuals.

[6] The parties stipulated in Case 12–RC–7738 that these employees, also referred to as food service managers, are supervisors within the meaning of the Act, and I so find. Moreover, all 79 of the food service managers are employees of Duval County.

[7] Both parties have taken the position that lead persons are appropriately included in any unit found appropriate herein.

[8] Neither party seeks the inclusion of the on-call employees in any unit found appropriate herein.

On August 5, 1994, I dismissed a petition filed by the Petitioner involving the same group of employees of the Employer, pursuant to the *Res-Care* test. Thereafter, on September 8, 1995, the State of Florida Public Employee Relations Commission (PERC) issued an order dismissing a petition filed by the Petitioner that sought to include the Employer's employees in a bargaining unit with the Duval County employees. PERC's finding was based on the fact that this Employer was the actual employer of the employees at issue, not Duval County.

In *Management Training*, supra, the Board held that the *Res-Care* test for deciding whether it should assert jurisdiction over an employer with close ties to an exempt government entity was "unworkable and unrealistic."[9] The Board rejected the rationale of *Res-Care* which substituted the Board's assessment of the quantity and/or quality of the terms and conditions of employment available for negotiation for that of the parties. In its place, the Board adopted a simplified two-prong test: (1) does the Employer meet the definition of "employer" under Section 2(2) of the Act; and (2) does the Employer meet the Board's statutory and monetary jurisdictional standards.[10] With respect to the second prong, the Employer concedes that it satisfies the Board's discretionary jurisdictional standards and statutory definitions within the meaning of Section 2(6) and (7) of the Act. With regard to the Employer's arguments that it does not maintain sufficient control over the terms and conditions of employment of the petitioned-for employees to engage in meaningful bargaining, there is no dispute that the Employer retains authority over their hiring, discipline, initial work assignments, and discharge. Moreover, the Act provides employees with the right to choose a collective-bargaining representative, and in doing so they can weigh the benefits of a collective-bargaining relationship. It is not for the Employer alone to decide that collective bargaining could not be meaningful.

Contrary to the Employer, I find that jurisdiction should be asserted over it and that the Employer satisfies the *Management Training* test; because the record evidence provides no other basis for declining to assert jurisdiction, the assertion of jurisdiction over the Employer herein is clearly warranted.[11]

[9] 317 NLRB at 1355.

[10] 317 NLRB at 1358.

[11] The Employer also argues that it is not an employer within the meaning of Sec. 2(2) of the Act because the Act provides that the term employer shall not include "any state or political subdivision thereof . . . ." There is no record evidence to support the contention that the Employer is administered by individuals who are responsible to public officials, or to the general electorate of Duval County within the meaning of Board case law. See *Concordia Electric Cooperative*, 315 NLRB 752 (1994). Accordingly, I find the Employer is an employer within the meaning of Sec. 2(2) of the Act.