

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

ARAMARK CORPORATION<sup>1</sup>

Employer

and

Case 4-RC-20260

NATIONAL UNION OF HOSPITAL AND  
HEALTH CARE EMPLOYEES,  
AFSCME, AFL-CIO, DISTRICT 1199C

Petitioner

**DECISION AND ORDER**

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.
3. The labor organization involved claims to represent certain employees of the Employer.
4. No 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, for the following reasons:

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<sup>1</sup> The Employer's name appears as amended at the hearing.

5. The Employer provides food and housekeeping services to various corporations and institutions, including Pennsylvania Hospital (herein called the Hospital), which is located in Philadelphia, Pennsylvania. The Petitioner seeks to represent a unit of food service and environmental service employees employed by the Employer at the Hospital. The Employer contends that the petition should be dismissed because it expects that its operations at the Hospital will cease.<sup>2</sup>

The record shows that the Hospital has had a contractual relationship with the Employer since July 12, 2000. On about July 25, 2001, the Hospital advised the Employer that as of September 2, the Hospital would itself provide housekeeping and dining services and would no longer use the Employer.<sup>3</sup> By letter dated the next day, the Hospital's Executive Director informed the Employer's employees, inter alia, that the Hospital had notified the Employer "that our Food and Environmental Service contract would terminate sometime within the next 180 days." The Petitioner filed this petition on July 30. In a subsequent letter to the Employer's employees dated August 6, the Hospital stated that it "would provide its own housekeeping and dining services effective September 2" and that those employees who would like positions at the Hospital beginning on that date would need to complete an application form, W-4 form, direct deposit form and information questionnaire and return these documents to the Hospital by August 17. The letter further stated that the Hospital would be scheduling meetings for the week of August 20 to answer employee questions and provide benefit enrollment forms. By letter to the Employer dated August 7, the Hospital confirmed its earlier communication. The hearing in this matter was held on August 10, 2001.

The Hospital is part of the University of Pennsylvania Health System (herein called UPHS). UPHS has separate master agreements with the Employer covering the food services and environmental services at the Hospital. The master agreements also cover the Employer's services at two other UPHS hospitals. The effective date of these agreements is August 1, 2000, and the termination date is July 31, 2003. The contractual relationships between the Employer and the other two UPHS facilities covered by the master agreements have not been terminated.<sup>4</sup> The Employer has notified the provider of employee uniforms that its services at the Hospital will no longer be needed. The Employer has also notified its medical insurance carrier that the Hospital employees will no longer be on its payroll.

The Board will not conduct an election where the employer's cessation of operations is imminent and certain. *Hughes Aircraft Co.*, 308 NLRB 82 (1992); *Martin Marietta Aluminum, Inc.*, 214 NLRB 646 (1974). In determining whether the cessation of operations is sufficiently imminent and certain to warrant dismissal of the petition, the Board considers factors such as the period of time between the representation hearing and the expected date of cessation, steps taken by the employer to cease operations, and whether the employees have been notified. See *Hughes Aircraft Co.*, supra, 308 NLRB at 82-83; *Davey McKee Corp.*, 308 NLRB 839, 840 (1992); *Larson Plywood Co., Inc.*, 223 NLRB 1161 (1976). Mere speculation as to the uncertainty of

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<sup>2</sup> All dates are in 2001 unless otherwise specified.

<sup>3</sup> The parties stipulated that the only employees within the meaning of the Act employed by the Employer at the Hospital are those in the petitioned-for unit.

<sup>4</sup> The record does not indicate why the Hospital terminated its relationship with the Employer but the other UPHS facilities did not terminate their relationships with the Employer.

future operations is not sufficient to dismiss the petition. *Hazard Express, Inc.*, 324 NLRB 989, 990 (1997); *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976).

The record shows that pursuant to the Hospital's decision, the Employer expected to cease providing environmental and dining services at the Hospital as of September 2, less than a month after the hearing. Employees were clearly notified about the cessation of operations in two separate letters by the Hospital's representatives. Indeed, they were given the opportunity to obtain comparable positions directly with the Hospital, and there is no evidence that any of the employees in the petitioned-for unit will remain employed by the Employer after September 2. In addition, the Employer has taken concrete steps toward ceasing its operations at the Hospital, including notifying its uniform company and benefit carriers that their services would no longer be needed. Accordingly, I find that the Employer's plans to cease operations at the Hospital and lay off the employees described in the petitioned-for unit are sufficiently imminent and certain to warrant dismissing the petition.<sup>5</sup> See *Davey McKee Corp.*, supra, 308 NLRB at 840 (petition dismissed where cessation of business was scheduled to occur only 29 days from the date of the representation hearing); *Larson Plywood Co.*, supra, 223 NLRB at 1161 (petition dismissed where cessation of business was intended to occur "within 90 days" of the announced business resolution).

The Petitioner contends that the Employer's stated intention to cease operations at the Hospital is too speculative to bar an election. Specifically, the Petitioner contends that the master agreements between the Employer and the Hospital are effective until 2003 and that the Employer has not explained how and why its contract with the Hospital is being prematurely terminated.<sup>6</sup> In this regard, the Petitioner notes that the Employer's contracts are not being terminated at the other two UPHS facilities. The Petitioner further asserts that the timing of the cessation of operations suggests that it is a subterfuge designed to defeat the representation petition. Regardless of the Hospital's motive in terminating its contract with the Employer, or the Employer's contractual rights vis-a-vis the Hospital, the Employer's cessation of operations at the Hospital is certain and imminent. Accordingly, no useful purpose would be served in processing the petition at this time and I shall dismiss the subject petition. *Davey McKee Corp.*, supra, 308 NLRB at 840; *Hughes Aircraft Co.*, supra, 308 NLRB at 83. cf. *Norfolk Maintenance Corp.*, 310 NLRB 527, 528 (1993).<sup>7</sup>

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<sup>5</sup> On August 9, 2001, the Employer filed a Motion to Dismiss the petition that raises the same issues addressed in this Decision. By Order dated August 10, 2001, the Acting Regional Director denied that Motion but permitted the Employer to present during the course of the representation hearing the facts and arguments upon which the Motion to Dismiss was based. During the hearing, the Employer renewed its Motion to Dismiss the petition, and the Hearing Officer referred the Motion for ruling to the undersigned. For the reasons discussed herein, the Employer's Motion to Dismiss is hereby granted.

<sup>6</sup> On the day of the hearing, the Petitioner subpoenaed from the Employer and the Hospital the master agreements, as well as all correspondence regarding the modification or termination of the agreements. The Employer and the Hospital filed petitions to revoke the subpoenas after the hearing closed. For the reasons discussed above, I find that the subpoenaed material would not change this decision because the Employer's plans to cease operations at the Hospital are sufficiently imminent and certain to warrant dismissal of the petition. Therefore, the subpoena is revoked.

<sup>7</sup> In *Norfolk Maintenance*, the employer moved to dismiss the petition because the subcontract covering the work at issue was due to expire, and it did not plan to continue performing services at the sites covered by the petition. The Board denied the employer's motion to dismiss and directed an election because the other party to the contract

**ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and it hereby is, dismissed.

**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, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **September 24, 2001**.

Signed: September 10, 2001

at Philadelphia, PA

/s/

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DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four

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intended to extend the contract for at least four months. In the instant case, in contrast, the Hospital has clearly indicated that it is terminating the contract.

The Petitioner has suggested that if the petition is dismissed, this Decision should provide that the petition would be reinstated in the event that the Employer does not cease operations at the Hospital as planned. To ensure the employees' statutory rights to an election, if the Employer does not cease operations I will entertain a motion from Petitioner to reinstate the petition. See *Davey McKee Corp.*, supra, 308 NLRB at 840; *Tracinda Investment Corp.*, 235 NLRB 1167 (1978).