

E.D. NO. 76-31

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ARA SERVICES, INC.,  
Public Employer,

-and-

Docket No. RO-76-108

COUNCIL #71, AMERICAN FEDERATION  
OF STATE, COUNTY, AND MUNICIPAL  
EMPLOYEES, AFL-CIO,  
Petitioner.

SYNOPSIS

The Executive Director dismisses a petition for certification of employee representative, finding that the Commission lacks jurisdiction over ARA Services, Inc., a private corporation. The Executive Director determines that ARA Services, Inc. is not a Public Employer within the meaning of the Act.

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DECISION

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") on February 24, 1976, by Council 71, American Federation of State, County, and Municipal Employees, AFL-CIO, ("Council 71") with respect to a unit of kitchen and cafeteria workers employed in the food service facilities at Glassboro State College.

The petition lists ARA Services, Inc., ("ARA") as the Public Employer of the employees sought to be represented by the Petitioner. Because there is a question as to whether the employer of the employees sought is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1.1 et seq., the undersigned commenced, pursuant to N.J.A.C. 19:11-1.8 and 19:11-1.12, an administrative investigation of the petition to determine the facts.

Pursuant to the above-mentioned investigation, the undersigned, by letters dated March 3, 1976 and April 6, 1976,

solicited statements of position and copies of correspondence or contracts covering or pertaining to any of the employees in the petitioned-for unit as well as any evidence to refute the conclusion that the Commission lacks jurisdiction in this matter from Council 71, ARA, Glassboro State College, the Office of Employee Relations of the State of New Jersey, and the Department of Higher Education of the State of New Jersey.

Written responses were received from ARA and Glassboro State College. Both assert that ARA is the employer of the employees in question. The Office of Employee Relations has indicated that it is in accord with the position taken by Glassboro State College. Additionally, we are in receipt of a copy of a letter from the Petitioner to the Regional Director, Fourth Region, National Labor Relations Board, urging the Board to reconsider an earlier decision, discussed below, and to commence a representation proceeding immediately.

The parties to the instant case were also parties to a case before the National Labor Relations Board, Fourth Region, Case No. 4-RC-11972, involving the same employees the Petitioner herein is seeking to represent.

Peter W. Hirsch, Regional Director for the Fourth Region, dismissed the petition after finding:

"...As the Employer's ARA unit involved herein is engaged in providing food services at Glassboro State College, pursuant to a contract with the State of New Jersey, and that these operations of the Employer are intimately tied with the educational process of the aforesaid college,

an institution owned and operated by the State of New Jersey and exempt from the jurisdiction of the National Labor Relations Board, it accordingly would not effectuate the purposes of the Act to assert jurisdiction over the Employer's operations herein. Servomation Mathias, Pa., Inc., 200 NLRB 1063; Slater Corporation, 197 NLRB 1282." 1/

The contract referred to in Regional Director Hirsch's order is between ARA and the State of New Jersey, acting by and through the Director of the Division of Purchase and Property of the State of New Jersey for and on behalf of Glassboro State College.

On the basis of the administrative investigation herein, the undersigned makes the following uncontroverted findings and determinations:

1. The contract gives ARA control over "labor and labor relations" in the food service operations at the college.
2. The contract does require ARA to conform to certain hiring practices mandated by the State (e.g. minority hiring, preference to State residents and Glassboro State students, minimum qualifications for management personnel).
3. The contract gives the College:
  - a. right to dismiss ARA personnel for offensive conduct.
  - b. right to interview and accept ARA management personnel before they assume positions and

1/ Case No. 4-RC-11972, Order Withdrawing Notice of Hearing and Dismissing Petition, January 23, 1976.

the right to determine if management personnel are performing satisfactorily, and may continue in their positions.

- c. the right to determine if the level and number of management personnel is adequate.

4. ARA is minimally a joint employer of the employees working in the food service facilities at Glassboro State College and may be the sole employer of said employees.

5. Council 71, AFSCME, AFL-CIO is an employee representative within the meaning of the Act.

N.J.S.A. 34:13A-5.1(a) limits the jurisdiction of the Public Employment Relations Commission to matters of public employment.

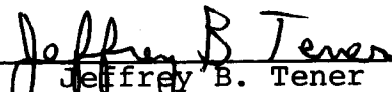
N.J.S.A. 34:13A-3(c) defines "employer" to include "public employers", meaning:

"the State of New Jersey or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service."

As it appears to the undersigned that ARA Services, Inc. does not meet the definition of a public employer, the undersigned, based upon the above, and in the absence of substantial and material disputed factual issues, determines that the instant

petition is outside the jurisdiction of the Commission, and  
said petition is hereby dismissed.

BY ORDER OF THE EXECUTIVE DIRECTOR

  
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Jeffrey B. Tener  
Executive Director

DATED: Trenton, New Jersey  
May 4, 1976