

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

**DRIFTWOOD HEALTHCARE
CENTER—SANTA CRUZ**

and

**Cases 32-CA-25333
32-CA-25391**

**SEIU UNITED HEALTHCARE
WORKERS—WEST**

ORDER¹

The Employer's petition to revoke subpoena duces tecum B-617167 (paragraphs 1 and 2) and subpoena ad testificandum A-891166 is denied.² The subpoenas seek information relevant to the matter under investigation and describe with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Employer has failed to establish any other legal basis for revoking the subpoenas.³ See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food*

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² By letter dated February 17, 2011, the Region advised that the parties had resolved some of the charges' allegations through a non-Board proceeding, pursuant to which the Union withdrew certain allegations contained in the charges. Accordingly, the Region is no longer seeking the information requested in subpoena B-617167 paragraphs 3 through 6, and it is no longer seeking to enforce subpoenas ad testificandum A-891163, A-891164, A-891165, and A-891167.

³ Member Hayes joins in denying the petition to revoke the subpoena duces tecum. With respect to the subpoena ad testificandum, he would hold the petition in abeyance for thirty days to provide the Region an opportunity to file a supplemental opposition explaining what further evidence is necessary to determine if a complaint should issue, and why such evidence can only be obtained through the affidavit of the Employer's agent and/or supervisor.

Processors, Inc., 81 F.3d 507 (4th Cir. 1996).⁴

Dated, Washington, D.C., February 28, 2011

WILMA B. LIEBMAN, CHAIRMAN

MARK GASTON PEARCE, MEMBER

BRIAN E. HAYES, MEMBER

⁴ The Region asserts that the Employer's petition, which was filed on November 29, 2010, should be denied because it was not timely filed within five days after November 19 and 20, the dates that the Employer received the subpoenas. The Board's Rules and Regulations, Sec. 102.31(b), require a petition to revoke a subpoena to be filed within 5 days after the date the subpoena is received. Sec. 102.111(a) of the Board's Rules and Regulations states that "[w]hen the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation." Thus, the relevant time computation does not include the Saturdays and Sundays following November 19 (November 20-21 and 27-28) or the Thanksgiving holiday (November 25), and the fifth business day following receipt of the subpoenas was November 29. Accordingly, we find that the petition was timely filed.