

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

**STATION CASINOS, INC., ALIANTE GAMING,
LLC d/b/a/ ALIENTE STATION CASINO & HOTEL,
BOULDER STATION, INC. d/b/a BOULDER
STATION HOTEL & CASINO, PALACE
STATION HOTEL & CASINO, INC. d/b/a
PALACE STATION HOTEL & CASINO,
CHARLESTON STATION, LLC d/b/a
RED ROCK CASINO RESORT SPA,
SANTA FE STATION, INC. d/b/a
SANTA FE STATION HOTEL & CASINO,
SUNSET STATION, INC. d/b/a SUNSET
STATION HOTEL & CASINO, TEXAS STATION, LLC
d/b/a TEXAS STATION GAMBLING
HALL AND HOTEL, LAKE MEAD
STATION, INC. d/b/a FIESTA HENDERSON
CASINO HOTEL, FIESTA STATION, INC. d/b/a FIESTA
CASINO HOTEL, and GREEN VALLEY
RANCH GAMING, LLC d/b/a GREEN VALLEY
RANCH RESORT SPA CASINO**

and

**Cases 28-CA-22918
28-CA-23089
28-CA-23224**

**LOCAL JOINT EXECUTIVE BOARD OF
LAS VEGAS, CULINARY WORKERS UNION,
LOCAL 226 AND BARTENDERS UNION
LOCAL 165, affiliated with UNITE HERE**

ORDER

The request of Respondent Station Casinos, Inc. for special permission to appeal the Regional Director's refusal to institute subpoena enforcement proceedings is granted.

Although we would ordinarily not grant special permission to appeal in order to resolve what is essentially a discovery dispute, this case presents the unusual question of how the Board should exercise its statutory authority under Section 11(2) of the Act to seek enforcement of a subpoena at the request of a party to a Board proceeding. On

the one hand, as the judge observed, the judge does not have statutory authority to seek or direct the Board to seek judicial enforcement. On the other hand, the judge and not the Board is in the best position to determine whether the statutory preconditions for seeking judicial enforcement are present. This is particularly true in a large complex case such as the instant case where the trial is on-going and the discovery dispute has been protracted.

Section 11(2) provides:

In case [of] contumacy or refusal to obey a subpoena issued to any person, any United States district court or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

The Board, functioning as an appellate body, is in a poor position to make a finding of either contumacy or refusal to obey. The trial judge, in contrast, is in the best position to determine if either of those two preconditions of Board action are present in this case.

For those reasons, we hereby grant special permission to appeal, but only in order to remand to the judge with instructions to permit the Respondent to move the judge to find that the Charging Party has acted in contempt of those portions of the subpoena not quashed by the judge or has otherwise refused to obey those portions of the subpoena and, if he so finds, to permit the Respondent to request that the General Counsel, acting through the Regional Director, on behalf of the Board, seek judicial enforcement. The General Counsel and Charging Party shall be provided an opportunity to oppose the motion on the grounds either that no such contempt or refusal

to comply has taken place or that judicial enforcement would otherwise be “inconsistent with law and with the policies of the Act” within the meaning of 29 C.F.R. Section 102.31(d).

Dated, Washington, D.C., March 3, 2011.

Craig Becker, Member

Brian E. Hayes, Member

MEMBER PEARCE, dissenting:

I would deny the Respondent’s request for special permission to appeal from the Regional Director’s refusal to institute subpoena enforcement proceedings.

Mark Gaston Pearce, Member