

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

**BEACON SALES ACQUISITION, INC.,
d/b/a QUALITY ROOFING SUPPLY
COMPANY**

and

**Cases 4-CA-36952
4-CA-37107
4-CA-37120
4-CA-37209
4-CA-37304
4-CA-37306
4-CA-37377
4-CA-37378
4-CA-37433
4-CA-37438
4-CA-37456
4-CA-37548
4-CA-37536
4-CA-37841
4-CA-37885
4-CA-37943**

**INTERNATIONAL UNION of OPERATING
ENGINEERS, LOCAL 542, AFL-CIO**

ORDER

On June 7, 2011, Administrative Law Judge Michael A. Rosas orally granted the Respondent's petition to revoke the Charging Party's subpoena ad testificandum. In granting the petition to revoke, the judge found insufficient evidence that the subpoena was served on the intended recipient, the Respondent's Chairman of the Board, Robert Buck, in accordance with Section 102.113(c) of the Board's Rules and Regulations. That Section states: "Subpoenas shall be served upon the recipient either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served." The judge found that the subpoena was delivered by certified mail to Buck's home, where it was refused by Buck's wife and returned to the Charging Party's office. The judge concluded that that there was

insufficient evidence that Buck was served by registered or certified mail.

On June 8, 2011, the Charging Party filed a request for special permission to appeal the judge's ruling. The Respondent filed a statement in opposition.

Having duly considered the matter, we grant the Charging Party's request for special permission to appeal from the judge's ruling, but on the merits we deny the appeal.¹ We find that in the unusual circumstances of this case, the Charging Party has failed to establish that the judge abused his discretion in granting the Respondent's petition to revoke.

On May 10, 2011, the first day of the hearing, the judge stated that he was not prepared to rule on the subpoena's merits or whether the attempted service by certified mail was sufficient. The judge suggested, however, that the Charging Party could achieve its service goal by making another attempt to serve Buck, this time at his place of business, before the judge ruled on the subpoena's merits. The Charging Party did not make a further attempt to serve Buck at his place of business or anywhere else.

On these facts, we do not find that the judge abused his discretion in revoking the subpoena. The judge found that the subpoena was not personally served on Buck and that the issue of whether service refused by Buck's wife was sufficient was not an issue he wished to litigate during the hearing, when service at Buck's place of business was clearly an option open to the Charging Party even at that time. Thus, as suggested by the judge, the Charging Party simply could have left a copy of the subpoena at the Respondent's principal office or Buck's place of business while the hearing was in progress and service would have been achieved. The Charging Party has failed to explain why it did not effectuate service in this way. Under these circumstances, we do not find that the judge

¹ Member Becker would deny Charging Party's request for permission to file the special appeal.

abused his discretion in granting the petition to revoke.

Accordingly, we deny the Union's special appeal.

Dated, Washington, D.C., June 29, 2011

CRAIG BECKER, MEMBER

MARK GASTON PEARCE, MEMBER

BRIAN E. HAYES, MEMBER