

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**VEOLIA TRANSPORTATION SERVICES, INC.**

**and**

**Case 28-CA-086419**

**AMALGAMATED TRANSIT UNION,  
LOCAL 1637, AFL-CIO-CLC**

**ORDER REFERRING RESPONDENT'S PETITION TO  
REVOKE SUBPOENAS DUCES TECUM TO THE  
ASSOCIATE CHIEF ADMINISTRATIVE LAW JUDGE**

On December 27, 2012, Counsel for the Respondent filed a Petition to Revoke Subpoenas Duces Tecum (Petition) served upon the Respondent by Counsel for the Acting General Counsel in the above-captioned matter. A copy of the Subpoenas Duces Tecum (B-637279), along with the Petition, are annexed hereto. In order to provide expeditious handling of this matter prior to hearing, presently scheduled to commence in Las Vegas, Nevada, on January 8, 2013,

**IT IS HEREBY ORDERED**, pursuant to Sections 102.24 and 102.31(b) of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, that the Petition filed herein be, and the same hereby is, referred to the Associate Chief Administrative Law Judge for consideration and ruling.

Dated at Phoenix, Arizona, this 27<sup>th</sup> day of December 2012.

/s/ Cornele A. Overstreet

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Cornele A. Overstreet, Regional Director

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

**VEOLIA TRANSPORTATION SERVICES, INC.  
(LAS VEGAS DIVISION)**

**and**

**Case No. 28-CA-086419**

**AMALGAMATED TRANSIT UNION,  
LOCAL 1637, AFL-CIO**

**PETITION TO REVOKE AND/OR QUASH SUBPOENA DUCES TECUM**

Comes now Respondent, VEOLIA TRANSPORTATION SERVICES, INC., (“Respondent” or “Veolia”), by and through its undersigned attorneys, and files its Petition to Revoke and/or Quash Subpoena Duces Tecum B-637279 (attached as Exhibit A), served on Respondent on or about December 20, 2012. In support thereof, Respondent states as follows:

**I. INTRODUCTION**

Subpoena Duces Tecum No. B-637279 is so overly broad and untimely that it would be a manifest injustice to require Veolia to respond in full to the subpoena within the time set forth in the subpoena. The hearing in this matter is set for January 8, 2013. Subpoena Duces Tecum No. B-637279 was sent to Respondent on Thursday December 20, 2012 at approximately 3:40 PM PST. Inasmuch as December 24, 25, 31, and January 1 are federal holidays, Respondent effectively has eight (8) working days to produce voluminous numbers of documents by the date of the hearing.

The NLRB Casehandling Manual provides that trial subpoenas should “be served at least two (2) weeks prior to trial” because “[t]his allows sufficient time to arrange for production of the witness or documents and for ruling on a petition to revoke prior to trial.” NLRB Casehandling Manual, § 10340. In this case, the subpoena was served well under the two-week

minimum set forth by the Casehandling Manual. Consequently, it does not allow sufficient time to arrange for production of documents and for a ruling on a petition to revoke prior to trial.

The unduly short period of time given to Respondent to respond to the subpoena is exacerbated by the grossly overbroad nature of the documents requested and, in particular, by the excessive number of document requests. Subpoena Duces Tecum No. B-637279 contains over forty (40) categories of documents subpoenaed, including letters, notes, emails, correspondence, text messages, minutes of meetings, diaries, written memorializations of oral conversations. Any of these documents could have been subpoenaed prior to December 20, 2012, but Region 28 waited until eight (8) working days before the scheduled hearing to subpoena them. Region 28 could also have tailored its list of documents to the specific issues which will be raised at the hearing in this matter, but it did not. As a result the subpoena is vastly overbroad and unduly burdensome. The excessively broad nature of the documents requested makes it extremely onerous for Veolia to produce them within the eight (8) days the subpoena has provided.

Because of the excessively broad nature of the documents requested and the inordinately short time period for responding, it would be wholly inequitable to require Veolia to produce the documents subpoenaed by the time of the hearing. Subpoena Duces Tecum No. B-637279 is clearly in violation of the NLRB Casehandling Manual, and should, therefore, be quashed in its entirety.

## **II. APPLICABLE LEGAL STANDARDS**

The NLRB Casehandling Manual in Representation Proceedings mandates that a subpoena may be revoked if “the subpoena does not relate to any matter under investigation or at issue in a hearing, does not describe the evidence sought with sufficiently particularity or if for any other reason sufficient in law the subpoena is otherwise invalid.” § 11210, 11782. Rule

102.66(c) of the NLRB Rules and Regulations provides that a subpoena duces tecum shall be revoked if the evidence sought “does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in the law the subpoena is otherwise invalid.”

The NLRB Casehandling Manual in Representation Proceedings further mandates that a subpoena duces tecum “should seek relevant evidence and should be drafted as narrowly and specifically as is practicable.” §11210, 11776. In addition, the Casehandling Manual directs that “use of the word ‘all’ in the description of records should be avoided wherever possible.” *Id.*

The NLRB also has noted that the Federal Rules of Civil Procedure (“FRCP”), while not binding upon the agency, provide useful guidance regarding revocation of subpoenas “for any other reason sufficient in law.” *Brinks, Inc.*, 281 NLRB 468, 468-69 (1986). Rule 45 of the Federal Rules of Civil Procedure states that a subpoena shall be quashed if it “subjects a person to an undue burden.” In addition, Rule 26 of the Federal Rules of Civil Procedure provides that discovery sought by any party must be relevant to the matter at issue or calculated to lead to the discovery of admissible information. *Brinks, Inc.*, 281 NLRB at 468-69.

### **III. OBJECTIONS TO SUBPOENA NO. B-637372**

#### **A. General Objections**

As noted above, Subpoena Duces Tecum No. B-637279 is untimely and requires Respondent to produce documents within a time frame which is far shorter than that required by the NLRB Casehandling Manual. The subpoena compels productions of a large number of documents in eight (8) working days, well under the two-week minimum set forth in the Casehandling Manual.

In addition, the subpoena is overly broad in contravention of the NLRB Rules and Regulations, including Section 102.66(b), because Region 28 did not tailor the document requests to the actual issues to be litigated at the hearing. Moreover, the subpoena is vague and ambiguous. The subpoena seeks confidential and proprietary information not material to these proceedings, constitutes an unwarranted, unjustified fishing expedition into irrelevant materials, and is not restricted to the issues raised in the charge and complaint. In addition, it seeks information and/or documents protected by the attorney/client and/or work product privileges. The subpoena seeks extremely wide-ranging information that has no bearing whatsoever on the issues currently presented in the Complaint or charge. The subpoena also requests extensive information, confidential in nature, regarding Respondent and its employees. Because of the volume and complexity of documents required to be produced by the subpoena, Respondent does not have the capacity, personnel, or equipment to respond to the subpoena within the time specified. Compliance with the subpoena in the time specified would seriously disrupt the business operations of Respondent. Consequently, the time requirements of the subpoena are not reasonably defined and impose an undue burden on Respondent.

**B. Objections to Subpoena Definitions and Instructions for Use**

1. Subpoena Duces Tecum No. B-637279 and the Subpoena Definitions and Instructions for Use contained within the attachment to the subpoena, Paragraph A (hereinafter “Instruction A”), are in contravention of the NLRB Rules and Regulations Section 102.66(b) and Section 11210, 11776 of the NLRB Casehandling Manual because the definition is unduly burdensome and overly broad. Instruction A does not relate to any matter under investigation or in question in the proceedings does not describe with sufficient particularity the evidence whose production is required, and is not drafted as narrowly and specifically as possible. Instruction A defines “Respondent” as including Respondent’s “owners, managers, supervisors, agents, and/or representatives.” The broad nature of the language in Instruction A includes, by its terms, documents which are not in the possession or custody and control of Respondent and, therefore, Instruction A requires Respondent to obtain documents from entities who are not parties to this proceeding. In addition, by requesting documents from Respondent’s “agents” or “representatives,” Instruction A seeks documents which may be protected by the attorney-client and/or attorney work product privileges.

2. Subpoena Duces Tecum No. B-637279 and the Definitions and Instructions for Use contained within the attachment to the subpoena, Paragraph D (hereinafter “Instruction D”), are in contravention of the NLRB Rules and Regulations Section 102.66(b) and Section 11210, 11776 of the NLRB Casehandling Manual because the definition is unduly burdensome and overly broad. Instruction D does not relate to any matter under investigation or in question in the proceedings, does not describe with sufficient particularity the evidence whose production is required, and is not drafted as narrowly and specifically as possible. Instruction D defines “Document” or “Documents” as:

Any written, recorded, filmed or graphic matter, whether produced or reproduced on paper, cards, tapes, film, electronic facsimile, computer storage device, or any other media, including, but not limited to, memoranda, notes, minutes, records, telephone contacts, notice of disciplinary actions, photographs, correspondence, telegrams, diaries, bookkeeping entries, financial statements, tax returns, checks, check stubs, reports, studies, charts, graphs, statements, notebooks, handwritten notes, applications, agreements, books, pamphlets, periodicals, appointment calendars, records or recordings of oral conversations, employment forms, originals and all copies which are different in any way from the original, whether by interlineations, receipt, stamp, notations, indication of copies sent or received or otherwise, and drafts. The terms include all graphic or records and representations of any kind, including without limitation photographs, charts, graphs, microfiche, microfilm, videotape recordings, motion pictures and electronic, mechanical or electrical records or recordation of any kind including without limitation electronic mail communications, computer disks, computer input or output, computer hard drive files, tapes, cassettes, disks and recordings. The term includes material in any language.

(Emphasis added). Instruction D is overly broad because the list of media that are encompassed within the definition of “document” is so extensive that it includes material that could not in any way be relevant to the issues in the charge or complaint or within the ability of the Respondent to produce within the time frame specified. The information requested does not relate to any matter under investigation or in question in the proceedings, nor is it drafted as narrowly and specifically as possible. Because of the overly broad definition contained in Instruction D, compliance would seriously disrupt Veolia’s business operations. Moreover, the definition seeks information from entities who are not parties to this case or are not named in the underlying charge. Thus, the instruction is overly broad because it seeks to obligate Respondent to make inquiries beyond the parties to this case or to the extent it pertains to documents, things, or information not in the custody or control of Respondent. In addition, compliance with Instruction D would require Respondent to produce “documents” which are confidential and proprietary.

Moreover, due to the overly broad nature of this request, most of which is irrelevant to the case at issue, Respondent would be required to sift through all of its “records,” regardless of the source or how it was produced or reproduced, which would be onerous in the extreme. This is especially true given the use of the words “**any**” and “**all**” in the definition of “Document” or “Documents.” Instruction D of the Definitions and Instructions for Use contained within the attachment to the subpoena states, in relevant part, “ ‘Any,’ ‘each,’ and ‘all’ shall be read to be all-inclusive and require the production of each and every document responsive to the request in which such terms appear.” By broadening Instruction D to include absolutely everything, the subpoena exceeds the scope and intent of Section 11776 of the Casehandling Manual, which states, in pertinent part, “**use of the word ‘all’ in the description of the records should be avoided whenever possible.**” *See* Casehandling Manual in the Representation Cases, § 11776. Consequently, Instruction D is in violation of Section 11776 of the Casehandling Manual. Respondent would be required to incur significant cost both in the hours spent searching for this overly broad information and in copying and producing said information.

Instruction D also is in contravention of the NLRB Rules and Regulations Section 102.66(b) and Section 11776 of the NLRB Casehandling Manual to the extent it requests documents and/or information that are protected by the attorney/client and/or attorney work product doctrines.

3. Subpoena Duces Tecum No. B-637279 and the Definitions and Instructions for Use contained within the attachment to the subpoena, Paragraph E (hereinafter “Instruction E”), are in contravention of the NLRB Rules and Regulations Section 102.66(b) and Section 11210, 11776 of the NLRB Casehandling Manual because the definition is unduly burdensome and overly broad. Instruction E does not relate to any matter under investigation or in question in the

proceedings and does not describe with sufficient particularity the evidence whose production is required, nor is it drafted as narrowly and specifically as possible. Instruction E is overly broad because the list of media that are encompassed within the definition of “correspondence” is so extensive that it includes material that could not in any way be relevant to the issues in the charge or complaint or within the ability of the Respondent to produce within the time frame specified. The information requested does not relate to any matter under investigation or in question in the proceedings, nor is it drafted as narrowly and specifically as possible. Because of the overly broad definition contained in Instruction E, compliance would seriously disrupt the Respondent’s business operations. Moreover, due to the overly broad nature of this request, most of which is irrelevant to the case at issue, Respondent would be required to sift through all of its “records,” regardless of the source or how it was produced or reproduced, which would be onerous in the extreme.

Instruction E also is in contravention of the NLRB Rules and Regulations Section 102.66(b) and Section 11776 of the NLRB Casehandling Manual to the extent it requests documents and/or information that are protected by the attorney/client and/or attorney work product doctrines.

4. Subpoena Duces Tecum No. B-637279 and the Definitions and Instructions for Use contained within the attachment to the subpoena, Paragraph F (hereinafter “Instruction F”), are in contravention of the NLRB Rules and Regulations Section 102.31(b) and Section 11776 of the NLRB because of the inclusion in Instruction F of the word “all.” The Casehandling Manual specifically states that “use of the word ‘all’ in the description of records should be avoided. In addition, Definition F does not seek relevant evidence is not drafted as narrowly and specifically as possible.

5. Subpoena Duces Tecum No. B-637279 and the Definitions and Instructions for Use contained within the attachment to the subpoena, Paragraph H (hereinafter “Instruction H”), are in contravention of the NLRB Rules and Regulations Section 102.31(b) and Section 11776 of the NLRB because the definition is unduly burdensome and overly broad. Instruction H does not relate to any matter under investigation or in question in the proceedings and does not describe with sufficient particularity the evidence whose production is required, nor is it drafted as narrowly and specifically as possible. Instruction H requests information from “Respondent, its present or former managers, supervisors, agents, attorneys, accountants, advisors, investigators, and any other persons and companies directly or indirectly employed by, or connected with, Respondent, or its parent corporations, subsidiaries, or other related companies and agencies.” This definition is so broad and vague that it could potentially encompass thousands of other entities who have no relation to the allegations contained in the charge. The inclusion of “former” employees and those only “connected with” Respondent encompasses so many individuals and entities that it would be extremely burdensome for Respondent to identify those individuals and entities and then obtain the documents requested in the subpoena. Instruction H also seeks to obligate Respondent to make inquiries beyond the parties to this case and is objectionable to the extent it pertains to documents, things, or information not in the custody or control of Respondent. In addition, it seeks documents protected by the attorney-client and work product privileges.

6. Subpoena Duces Tecum No. B-637279 and the Definitions and Instructions for Use contained within the attachment to the subpoena, Paragraph I (hereinafter “Instruction I”), are in contravention of the NLRB Rules and Regulations Section 102.66(b) and Section 11210, 11776 of the NLRB Casehandling Manual because the instruction is unduly burdensome and

overly broad. Because of the overly broad definition contained in Instruction I, compliance would seriously disrupt the Employer's business operations.

7. Subpoena Duces Tecum No. B-637279 and the Definitions and Instructions for Use contained within the attachment to the subpoena, Paragraph J (hereinafter "Instruction J"), are in contravention of the NLRB Rules and Regulations Section 102.66(b) and Section 11210, 11776 of the NLRB Casehandling Manual because the definition is unduly burdensome and overly broad. Instruction J does not relate to any matter under investigation or in question in the proceedings and does not describe with sufficient particularity the evidence whose production is required, nor is it drafted as narrowly and specifically as possible. In addition, because Instruction J requires Respondent to identify and provide information about documents not in its possession, Instruction J seeks to obligate Respondent to make inquiries beyond the parties to this case. It is objectionable to the extent it pertains to documents, things, or information not in the custody or control of Respondent. In addition, it is objectionable to the extent it requires the production of documents and information protected by the attorney/client and/or work product privileges and to the extent it requires the production of confidential and/or proprietary information.

8. Subpoena Duces Tecum No. B-637279 and the Definitions and Instructions for Use contained within the attachment to the subpoena, Paragraph K (hereinafter "Instruction K"), are in contravention of the NLRB Rules and Regulations Section 102.66(b) and Section 11210, because the instruction is unduly burdensome and overly broad. Instruction K does not relate to any matter under investigation or in question in the proceedings and does not describe with sufficient particularity the evidence whose production is required, nor is it drafted as narrowly and specifically as possible. In addition, because Instruction K requires Respondent to "explain

the circumstances surrounding the destruction, discarding or disposal” of documents, it is unduly burdensome and would require Respondent to provide information about documents not in its possession. Instruction K is also objectionable to the extent it pertains to documents, things, or information not in the custody or control of Respondent. In addition, it is objectionable to the extent it requires the production of documents and information protected by the attorney/client and/or work product privileges and to the extent it requires the production of confidential and/or proprietary information.

9. Subpoena Duces Tecum No. B-637279 and the Definitions and Instructions for Use contained within the attachment to the subpoena, Paragraph M (hereinafter “Instruction M”), are in contravention of the NLRB Rules and Regulations Section 102.66(b) and Section 11210, because the instruction is unduly burdensome and overly broad. Instruction M does not relate to any matter under investigation or in question in the proceedings and does not describe with sufficient particularity the evidence whose production is required, nor is it drafted as narrowly and specifically as possible. In addition, because Instruction M requires Respondent to produce documents which are “without abbreviation or expurgation,” it requires Respondent to produce documents which may be proprietary or confidential and/or documents which may be protected by the attorney-client and/or work product privileges.

WHEREFORE, based on the foregoing, Respondent respectfully requests that Subpoena Duces Tecum No. 637279 be revoked as requested herein, consistent with the National Labor Relations Board’s Rules and Regulations and the National Labor Relations Board Casehandling Manual in Unfair Labor Practice Proceedings. In addition, Respondent requests, pursuant to Section 102.66(b) of the National Labor Relations Board’s Rules and Regulations, that this Petition to Revoke and/or Quash Subpoena Duces Tecum become part of the official record upon

its receipt by the National Labor Relations Board, and that any decision from this Petition to Revoke and/or Quash Subpoena Duces Tecum be reserved until hearing in order for Respondent to be permitted a full and fair opportunity to be heard and to present argument in support of this Petition.

Respectfully submitted,

McMAHON BERGER P.C.

/s/ James N. Foster, Jr.

James N. Foster, Jr.  
2730 North Ballas Road, Suite 200  
St. Louis, MO 63131-3039  
(314) 567-7350 – Telephone  
(314) 567-5968 – Facsimile  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of December, 2012, a true and correct copy of the above document was electronically filed on the Board's website to the following individuals:

Cornele A. Overstreet, Regional Director  
National Labor Relations Board  
Region 28  
2600 North Central Avenue, Suite 1800  
Phoenix, Arizona 85004-3099

I further certify that on the 27th day of December, 2012, a true and correct copy of the above document was served via electronic mail upon:

Eileen M. Bissen, Esq.  
Neyhart, Anderson, Flynn & Grosboll, APC  
369 Pine Street, Suite 800  
San Francisco, CA 94104-3323  
ebissen@neyhartlaw.com

/s/ James N. Foster, Jr.

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA  
Custodian of Records NATIONAL LABOR RELATIONS BOARD  
Veolia Transportation Services, Inc.  
3210 Citizen Avenue  
To North Las Vegas, NV 89032-4311

As requested by Larry A. Smith, Counsel for the Acting General Counsel

whose address is 600 Las Vegas Boulevard South, Suite 400 Las Vegas, Nevada 89101  
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE \_\_\_\_\_  
**an administrative law judge** \_\_\_\_\_ of the National Labor Relations Board  
**the Hearing Room of the National Labor Relations Board, 600 Las Vegas Boulevard South, Suite 400**  
at \_\_\_\_\_

in the City of Las Vegas, Nevada

on the 8<sup>th</sup> day of January 2013 at 9 : 00 (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in VEOLIA TRANSPORTATION SERVICES, INC.

**Cases 28-CA-086419**

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

**SEE ATTACHMENT**

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

**B - 637279**

Issued at Las Vegas, Nevada

this 19<sup>th</sup> day of December 2012



*Lester A. Neltzer*

**NOTICE TO WITNESS.** Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

**Re: VEOLIA TRANSPORTATION SERVICES, INC.**  
**Cases 28-CA-086419**

**SUBPOENA DEFINITIONS AND INSTRUCTIONS FOR USE**

- A. The "Respondent" refers to Veolia Transportation Services, Inc., its owners, managers, supervisors, agents, and/or representatives.
1. "Employees" refers to all regular full-time and part-time employees in the job classifications listed under Section 4 of the collective-bargaining agreement between Respondent and the Union effective by its terms from October 12, 2011, through June 30, 2013, but excluding all confidential and administrative employees, and supervisors, managers, and guards, as defined in the National Labor Relations Act.
- B. The "Union" refers to "Union" refers to Amalgamated Transit Union, Local 1637, AFL-CIO, its agents, officers, and/or representatives.
- C. Unless otherwise stated, each item requested in this subpoena covers the period from February 1, 2012, to the date this subpoena issued (the subject period).
- D. "Document" or "documents" means any written, recorded, filmed or graphic matter, whether produced or reproduced on paper, cards, tapes, film, electronic facsimile, computer storage device, or any other media, including, but not limited to, memoranda, notes, minutes, records, telephone contacts, notice of disciplinary actions, photographs, correspondence, telegrams, diaries, bookkeeping entries, financial statements, tax returns, checks, check stubs, reports, studies, charts, graphs, statements, notebooks, handwritten notes, applications, agreements, books, pamphlets, periodicals, appointment calendars, records or recordings of oral conversations, employment forms, originals and all copies which are different in any way from the original, whether by interlineation, receipt, stamp, notations, indication of copies sent or received, or otherwise, and drafts. The terms include all graphic or records and representations of any kind, including without limitation photographs, charts, graphs, microfiche, microfilm, videotape recordings, motion pictures and electronic, mechanical or electrical records or recordation of any kind including without limitation electronic mail communications, computer disks, computer input or output, computer hard drive files, tapes, cassettes, disks and recordings. The term includes materials in any language.
- E. "Correspondence" includes, but is not limited to, letters, memoranda, notes, tapes of telephone conversations or personal conversations, telegraphs, reports, teletype messages, electronic-mail, interoffice communications, recordings of conversations and telefax communications.

- F. "Any," "each," and "all" shall be read to be all-inclusive and to require the production of each and every document responsive to the request in which such terms appear.
- G. "And" and "or," and any other conjunctions or disjunctions used herein shall be read both conjunctively and disjunctively, so as to make the request inclusive rather than exclusive, and to require the enumeration of all information responsive to all or any part of each request in which any conjunction or disjunction appears.
- H. This subpoena is intended to cover all documents that are in the possession, custody, or control of the Respondent, its present or former managers, supervisors, agents, attorneys, accountants, advisors, investigators, and any other persons and companies directly or indirectly employed by, or connected with, Respondent or its parent corporations, subsidiaries, or other related companies and agencies.
- I. If any of the requested documents cannot be produced in full, then produce those documents to the extent possible, and specify the Respondent's reasons for the inability to produce the remainder, stating whatever information, knowledge or belief the Respondent has concerning the unproduced portion.
- J. If any document responsive to any request herein was, but no longer is, in your possession, custody or control, identify the document (stating its date, author, subject, recipients and intended recipients); explain the circumstances by which the document ceased to be in your possession, custody or control; and identify (stating the person's name, title, business address and telephone number, and home address and telephone number) of all persons known or believed to have the document or a copy thereof in their possession, custody, or control.
- K. If any document responsive to any request herein was destroyed, discarded, or otherwise disposed of for whatever reasons, identify the document (stating its date, author, addressee(s), recipients and intended recipients, title, and subject matter); explain the circumstances surrounding the destruction, discarding, or disposal of the document, including the timing of the destruction; identify all persons who authorized disposal of the document; and identify all persons known or believed to have the document or a copy thereof in their possession, custody, or control.
- L. This request is continuing in character and if additional responsive documents come to your attention following the date of production, such documents must be promptly produced.
- M. This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- N. All documents produced pursuant to this subpoena should be organized by what subpoena paragraph each document or set of documents is responsive to, and labels**

**referring to that subpoena paragraph should be affixed to each document or set of documents.**

- O. If any of the requested documents in whole or in part cannot be produced because they are deemed as privileged or otherwise subject to protection as trial preparation material, then describe the nature of the document not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the assessment of the applicability of the privilege or protection.
- P. The headings and references to complaint paragraphs used in the "Documents Requested" portion of this subpoena are intended solely as an aid to the reader and should not be considered a definitive or complete statement as to the relevance or materiality of the documents requested.
- Q. Unless otherwise noted, this subpoena does not supersede, revoke or cancel any subpoenas previously issued in this proceeding.
- R. Unless specifically requested, the following information should be redacted: the first five digits of social security numbers, driver license numbers, and medically sensitive information. Unless specifically requested, the following documents should not be produced: copies of social security cards, W-4 forms, and payroll deduction forms.

DOCUMENTS REQUESTED

Complaint Paragraph 5

1. A copy of the most current collective-bargaining agreement between Respondent and the Union.

Complaint Paragraph 6

2. Documents, including without limitation, letters, emails, facsimile transmissions, internal memoranda and other communications between Respondent *and the Union* during the period from June 1, 2012, to the present, regarding grievance 8949-232 related to employee Barbarra McAlpin, including but not limited to the following:
  - a. A copy of the grievance filed by the Union;
  - b. All requests for information submitted to the Respondent by the Union;
  - c. All Respondent responses to the Union request for information;
  - d. A copy of any document signed by the Union concerning said information;
  - e. Any audio or video recordings documenting the interaction between the Respondent and the Union regarding the information request or the use of the non-disclosure or use agreement;
3. Documents, including without limitation, letters, emails, facsimile transmissions, internal memoranda and other communications between Respondent *and the Union* during the period from June 1, 2012, to the present, regarding grievance 9069-070 related to employee Betsy O’Kief, including but not limited to the following:
  - a. A copy of the grievance filed by the Union;
  - b. All requests for information submitted to the Respondent by the Union;
  - c. All Respondent responses to the Union request for information;
  - d. A copy of any document signed by the Union concerning said information;
  - e. Any audio or video recordings documenting the interaction between the Respondent and the Union regarding the information request or the use of the non-disclosure or use agreement;
4. Documents, including without limitation, letters, emails, facsimile transmissions, internal memoranda and other communications between Respondent *and the Union* during the period from June 1, 2012, to the present, regarding grievance 8949-084 related to employee Monique Banks, including but not limited to the following:
  - a. A copy of the grievance filed by the Union;
  - b. All requests for information submitted to the Respondent by the Union;
  - c. All Respondent responses to the Union request for information;
  - d. A copy of any document signed by the Union concerning said information;
  - e. Any audio or video recordings documenting the interaction between the Respondent and the Union regarding the information request or the use of the non-disclosure or use agreement;

5. A copy of any document which limits the Union's ability to disclose or use information provided by Respondent and which was signed by the Union during the period of July 18, 2012, to the present.

**IN LIEU OF PROVIDING THE RECORDS AND DOCUMENTS REQUESTED ABOVE, PROVIDED NOTICE IS RECEIVED BY COUNSEL FOR THE GENERAL COUNSEL NO LATER THAN JANUARY 4, 2013, THE RESPONDENT MAKE THE RECORDS AND DOCUMENTS REQUESTED HEREIN AVAILABLE AT THE OFFICES OF THE NATIONAL LABOR RELATIONS BOARD, REGION 28, 600 LAS VEGAS BOULEVARD SOUTH, SUITE 400, LAS VEGAS, NEVADA, NO LATER THAN JANUARY 8, 2013, TO AN AGENT OR AGENTS OF THE NATIONAL LABOR RELATIONS BOARD FOR HIS, HER, OR THEIR INSPECTION, COPYING, AND USE IN CONNECTION WITH THESE PROCEEDINGS. PROVIDED FURTHER, THAT SUCH RECORDS AND DOCUMENTS REQUESTED HEREIN WILL NOT BE REQUIRED TO BE PRODUCED AT THE HEARING IN THIS MATTER IF THE RESPONDENTS AND COUNSEL FOR THE GENERAL COUNSEL ARRIVE AT A STIPULATION WITH REGARD TO THE INFORMATION CONTAINED THEREIN AND SUCH STIPULATION IS RECEIVED IN EVIDENCE BY THE ADMINISTRATIVE LAW JUDGE HEARING THIS MATTER.**