

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

**COMAU, INC.**

and

**Case 07-CA-094129**

**AUTOMATED SYSTEMS WORKERS  
LOCAL 1123, affiliated with  
CARPENTERS INDUSTRIAL COUNCIL,  
UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA**

**ORDER**

The Employer's petition to revoke subpoena duces tecum B-708711 is denied.

The subpoena seeks information relevant to the matter under investigation and describes 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.<sup>1</sup> Further, the Employer has failed to establish any other legal basis for revoking the subpoena.<sup>2</sup> See

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<sup>1</sup> To the extent that the Employer has provided some of the requested material, it is not required to produce that information again, provided that the Employer accurately describes which documents under subpoena it has already provided, states whether those previously-supplied documents constitute all of the requested documents, and provides all of the information that was subpoenaed.

<sup>2</sup> We reject the Employer's argument that the subpoena is without legal effect because the Board is not properly constituted. Section 102.31(a) of the Board's Rules and Regulations states that "[t]he Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof." Here, Chairman Pearce issued the subpoena, in accordance with this Rule.

To the extent that the Employer is arguing that the Board lacks a quorum to rule on the Petition to Revoke, we also reject this argument. We recognize that the United States Court of Appeals for the District of Columbia Circuit has concluded that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013). However, as the court itself acknowledged, its decision conflicts with rulings of at least three other courts of appeals. See *Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *U.S. v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *U.S. v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question

generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., March 26, 2013.

MARK GASTON PEARCE,	CHAIRMAN
RICHARD F. GRIFFIN, JR.,	MEMBER
SHARON BLOCK,	MEMBER

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remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act.