

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES**

GAMESTOP CORP., GAMESTOP INC., SUNRISE
PUBLICATIONS, INC., AND GAMESTOP TEXAS
LTD. (L.P.)

and

Case 20-CA-080497

MICHELLE KRECZ-GONDOR, an Individual

**ORDER DENYING RESPONDENT'S PETITION TO REVOKE
SUBPOENA B-709822**

The charges in this case date back to May 2012 and January 2013. On March 25, 2013, the Amended Complaint and Notice of Hearing (the "Motion") was filed by the Regional Director for Region 20 alleging the Respondents violated Section 8(a)(1) of the National Labor Relations Act (the "Act") by maintaining a dispute resolution program which required employees to waive their right to resolution of employment-related disputes by collective or class action. Hearing is set for April 18, 2013, in Sacramento, California.

Counsel for Acting General Counsel served the Custodians of Records of Respondent GameStop Corp., a purported holding company for Respondents GameStop, Inc., Sunrise Publications, and GameStop Texas, Ltd. (collectively "Respondents") with subpoena duces tecum B-709822 dated March 29, 2013 (subpoena) requesting 13 categories of documents which Acting General Counsel demands that the Respondents' records custodian produce at the outset of the hearing scheduled to commence on April 18, 2013, in Sacramento, California. The described documents include corporate filings, financial information, written materials in connection with the locations and numbers of employees at Respondents various locations, documents reflecting acknowledgment or receipt of the C.A.R.E.S. rules by all of Respondents' employees on May 7, 2012, and other documents related to the Respondents' C.A.R.E.S. rules as of May 7, 2012 or during time periods of November 7, 2011 to the present and as of April 1, 2010.

On April 8, 2013, Respondents filed their petition to revoke the subpoena (the "Petition"). In it, counsel for Respondents argues that the entire subpoena should be revoked because Request Nos. 8-13 are irrelevant, and the production of documents responsive to Request Nos. 1-7 would cause an undue burden on Respondents. Specifically, Respondents argue that the requested documents are irrelevant because this case involves a single charging party who participated in Respondents' C.A.R.E.S. program and documents related to Respondents' employees other than the Charging Party are irrelevant. In addition, Respondents argue that they have been working with the Acting General Counsel to determine the proper respondents in this case and

Respondents anticipate being able to stipulate to facts with the Acting General Counsel to avoid the production of Request Nos. 1-7. Finally, Respondents argue that they employ “thousands of individuals” and it would be an undue burden to comply with the subpoena requests 8 and 9 as “it would serve no purpose to the case or the allegations in the Complaint.”

On April 12, 2013, Acting General Counsel filed his opposition to the Petition (Opposition) addressing all of Respondent’s general and specific objections to the subpoena.

Here, in place of a specific narrow pleading that addresses the minor problems with this subpoena that in most cases are easily resolved between the parties through a simple meet and confer conference done in good faith, this latest pleading, objects to all 13 requests in the subpoena leaving no requests free from objection without stating that it has or will attempt to make a diligent search and reasonable inquiry to produce any portion of the requested documents or any statement that it is willing to produce the documents on the designated date or state a reason the party is unable to comply. Consequently I find that some of Respondent’s objections to the subpoena are frivolous as referenced below.

As to the specific objections of categories 1-13 many of the general objections are incorporated by reference with requests 1-13 of the subpoena.

A. Relevance

With respect to Respondent’s specific arguments that documents involving Respondents’ C.A.R.E.S. program as it relates to their employees beyond the Charging Party, I deny the Petition and overrule Respondent’s argument that these requested documents are somehow irrelevant as to subject matter and time. I find that the Acting General Counsel has materially limited the time period of his requests to either April 1, 2010 May 7, 2012 or from November 7, 2011 to the present, slightly over one year from the alleged first charge date of May 7, 2012, which I further find is relevant as are the requested documents. Acting General Counsel has alleged in the complaint that the C.A.R.E.S. Rules (Rules) are a condition of employment for Respondents’ employees, not just the Charging Party, and the extent to which maintaining such a condition of employment violates the Act. Amended Complaint paragraph 3(d). Moreover, as argued by the Acting General Counsel, the requested documents are relevant to Respondents’ affirmative defense that the Rules are not a condition of employment for Respondents’ California employees. Furthermore, Request Nos. 9 and 13 will show the extent to which Respondents allowed their employees’ requests to opt out of the Rules. Thus, I find that Request Nos. 8-13 are reasonably relevant to the complaint allegations or can lead to other evidence potentially relevant to the complaint allegations. See *Perdue Farms*, 323 NLRB 345, 348 (1997), *aff’d*. in relevant part, 144 F.3d 830, 833-34 (D.C. Cir. 1998)(The information needs to be only “reasonably relevant”).

The Supreme Court stated in *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943), that information requested in a subpoena duces tecum is relevant and must be produced so long as it is “not plainly incompetent or irrelevant to any lawful purpose.” Section 102.31(b) of the Board’s Rules and Regulations provides that an administrative law judge shall revoke a subpoena if “the evidence whose production is required does not relate to any matter under investigation or in question in the proceeding, or if . . . such subpoena does not describe with sufficient particularity the evidence whose production is required.” See also, *NLRB v. G.H.R. Energy Corp.*, 707 F.2d 110, 113 (5th Cir. 1982); *NLRB v. Williams*, 396 F.2d 247, 249 (7th Cir. 1968); *General Engineering, Inc. v. NLRB*, 341 F.2d 367, 372 (9th Cir. 1985).

I find the documents described in this subpoena bear a substantial relationship to the complaint allegations and will likely be quite relevant as to time and subject matter to the issues that will be addressed at the hearing. Therefore I find that the requested information is relevant to the fact allegation of the complaint and the associated legal issues in this case involving conditions of employment, the alleged waiver of employees rights to resolve employment-related disputes by collective or class action, and whether the Rules are reasonably read by Respondents’ employees to prohibit them from filing unfair labor practice charges with the Board and I deny the Petition as to its relevance objections to Request Nos. 8-13. Moreover, as agreed to by the Acting General Counsel, should the parties stipulate to facts that make the requested documents superfluous well in advance of trial, the Acting General Counsel will release Respondents from the obligation to produce documents made unnecessary by a stipulated fact(s).

B. Undue Burden

Respondent argues that the subpoena is unduly burdensome as to Request Nos. 1-7. Acting General Counsel argues that Respondent has not shown that producing the requested information would seriously disrupt its normal business operations.

As stated above, I find that Acting General Counsel has reasonably limited the time period for the documents sought for production. As such, I do not find that Acting General Counsel’s subpoena was served for harassment purposes. See *Mattel, Inc. v. Walking Mountain Products*, 353 F.3d 792, 813 (9th Cir. 2003). In addition, as argued by Acting General Counsel, I further find that Respondent has not met its burden by showing that production of the subpoenaed information “would seriously disrupt its normal business operations.” See *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 513-14 (4th Cir. 1996, cited with approval in *McAllister Towing & Transportation Co.*, 341 NLRB 394, 397 (2004), enf’d. 156 Fed. Appx. 386 (2d Cir. 2005). Consequently, I do not find the requests overly burdensome as argued by Respondents. The essential question is not the number or volume of records sought, but rather on whether the information sought is pertinent and relevant. *NLRB v. G.H.R. Energy Corp.*, supra; *McGarry v. S.E.C.*, 147 F.2d 389 (10th Cir. 1945). I find that the requested information is relevant as limited to the time period of May 7, 2012 or thereafter, as long as jurisdiction and commerce remain at issue in this case.

For the reasons stated above, I have concluded that Respondent failed to meet the minimum burden to provide grounds for revocation of the subpoena at issue here. As stated above, should the parties stipulate to facts well in advance of trial that make the production of documents unnecessary, Respondents can be released from some or all of their production duties. Accordingly, Respondent is directed to produce the subpoenaed documents at the hearing or otherwise make them reasonably available in advance of the hearing for review and copying by the Acting General Counsel "at such times and place, and under such circumstances as will cause the least possible annoyance or interruption to [Respondent's] business." See *G.H.R. Energy Corp.*, 707 F.2d 114, quoting from *Jackson Packing Co. v. NLRB*, 204 F.2d 842, 844 (5th Cir. 1953).

IT IS ORDERED that Respondent's petition to revoke B-709822 is **DENIED** in its entirety.

Dated: April 16, 2013.



Gerald M. Etchingam
Associate Chief Administrative Law Judge

Served by facsimile upon the following:

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NLRB-SAN FRANCISCO

JOB #499

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	STATUS
001	4/15	15:50	93565156	EC--S	00' 52"	004	OK
002		15:51	913123241001	EC--S	01' 43"	004	OK
003		15:53	919493997001	EC--S	02' 37"	004	OK
004		15:56	93815572	EC--S	01' 39"	004	OK

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