UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

MHA, LLC d/b/a MEADOWLANDS HOSPITAL MEDICAL CENTER

and **Case 22-CA-086823**
22-CA-089716
22-CA-090437
22-CA-091025
22-CA-091521
22-CA-092061
22-CA-096650
22-CA-097214
22-CA-099492
22-CA-100324
22-CA-106694

HEALTH PROFESSIONALS AND ALLIED EMPLOYEES, AFT/AFL-CIO

ORDER[1]

The Respondent's Request for Special Permission to Appeal from Administrative Law Judge Steven Davis's December 4, 2013 rulings is denied. The Respondent has failed to establish that the judge abused his discretion in granting the Union's petition to revoke paragraph 33 of the Respondent's subpoena B-710509 addressed to the Union.[2]

---

[1] The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] As recognized by our colleague, we review the judge's order under the highly deferential abuse-of-discretion standard. Abiding by that standard is essential to permit the judge to fulfill his duty under Sec. 102.35 of the Board's Rules and Regulations to "regulate the course of the hearing." See generally *F.W. Woolworth Co.*, 251 NLRB 1111, 1111 fn. 1 (1980), enfd. 655 F.2d 151 (8th Cir. 1981), cert. denied 455 U.S. 989 (1982). Here, as a defense to refusal-to-bargain allegations, the Respondent asserts that the Union's public criticisms of the Respondent in the media, online, and before governmental agencies violated the parties' no-strike agreement and thus privileged the Respondent's action. There is no dispute that the Union did engage in such communications. The Respondent's subpoena paragraph 33 nevertheless broadly

Dated, Washington, D.C., February 25, 2014.

MARK GASTON PEARCE, CHAIRMAN

NANCY SCHIFFER, MEMBER

Member Miscimarra, dissenting.

I would grant the Respondent's request for special permission to appeal the judge's Order granting the Union's petition to revoke paragraph 33 of the Respondent's subpoena duces tecum. I would then reverse the judge and compel production of the documents that the Respondent seeks in that paragraph.

The standard for upholding a Board subpoena involves a very expansive definition of relevance, i.e. the subpoena should be enforced if the evidence sought "relates to any matter under investigation or in question" in the proceeding. See Section 11(1) of the Act and Sec. 102.31(b) of the Board's rules. The requested evidence need not itself be dispositive of the issue or even admissible, as long as it reasonably could lead to the discovery of admissible evidence relevant to resolving the issue.

Paragraph 33 of the Respondent's subpoena clearly satisfies this standard. In that regard, the Respondent claims that certain of the Union's actions constitute a breach of the parties' no-strike provision (which, among other things, prohibits "other economic pressure activity by the Union"). The Respondent, in turn, argues that the

---

demands that the Union produce all documented internal and external communications for the last 3½ years that "mention or discuss or in any way relate to" the Respondent. The judge granted the Union's petition to revoke paragraph 33 on the ground that this paragraph of the subpoena related to an affirmative defense that was not a valid defense to the complaint. The judge expressly granted the Respondent leave to make an offer of proof at the hearing in support of its contentions. Given the essentially legal nature of the Respondent's defense, we find that Respondent has failed to establish the judge's chosen course was an abuse of his discretion.

Union's actions privileged it to suspend its bargaining obligation during the time that the Union engaged in such activity. It offers cases in support of its position. Whether that position will ultimately be found to have merit is not the issue at this time. The information that the Respondent seeks in paragraph 33 is clearly relevant to its defense and this is all that the Respondent must establish for the Board to enforce the subpoena. While our standard of review at this juncture is deferential to the judge (who, I note, simply said that the documents sought in paragraph 33 were "irrelevant"), the standard governing the enforcement of subpoenas is extremely broad, and I believe the judge's decision regarding lack of relevance is clearly erroneous. Accordingly, I would reverse that ruling.

PHILIP A. MISCIMARRA, MEMBER