

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

E & A PROTECTIVE SERVICES-BRAVO, LLC

and

Case 26-CA-091325

PIUS OTEBELE

and

Case 26-CA-092878

JAMES HARDNETT

ORDER

The Employer's Partial Petition to Revoke Subpoena Duces Tecum B-709008 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.¹ Further, the Respondent has failed to establish any other legal basis for revoking the subpoena.² See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB*

¹ In evaluating the subpoena, we have viewed it as modified by the Region's opposition brief as follows: (1) the subpoena does not require the personal appearance of the Employer's custodian of records; (2) subpoena paragraph 2 requests documents in the possession, custody or control of the Employer, its current or former agents, attorneys and any other persons or companies directly or indirectly employed by the Employer; and (3) subpoena paragraph 3 requests documents limited to the Memphis, Tennessee, Internal Revenue Service facility worksite.

² We reject the Employer's argument that the Board should hold a determination on this petition in abeyance pending a constitutionally valid quorum. 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 remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act. See *Sub-Acute Rehabilitation Center at Kearny d/b/a Belgrove Post Acute Care Center*, 359 NLRB No. 77, slip op. 1, fn.1 (2013).

v. Carolina Food Processors, Inc., 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., April 22, 2013.

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER