UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ACX PACIFIC NORTHWEST, INC.

and **Case 32-CA-108141**

MIGUEL ANGEL ROJAS

ORDER[1]

The Employer's petition to revoke subpoena ad testificandum A-954400 is denied as untimely. Section 11(1) of the Act and Section 102.31(b) and 102.111 of the Board's Rules and Regulations require that a petition to revoke a subpoena must be filed within 5 business days after the date of service of the subpoena. The subpoena here was served on the subpoenaed party on August 24, 2013. Thus, the instant petition, which was filed September 4, 2013, is untimely.

In addition, even assuming that the petition was timely filed, it is lacking in merit. The subpoena seeks information relevant to the matters 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. Further, the Petitioner 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 v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

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

[2] The Employer's argument that the Acting General Counsel lacked the authority to prosecute this case is rejected. Contrary to the Employer, the Acting General Counsel was properly appointed under the Federal Vacancies Reform Act, 5 U.S.C. § 3345, which does not contain the limitation cited by the Employer, and not pursuant to Sec. 3(d) of the Act. See *Muffley v. Massey Energy Co.*, 547 F.Supp. 2d 536, 542–543 (S.D.

Dated, Washington, D.C., February 10, 2014.

MARK GASTON PEARCE,	CHAIRMAN
HARRY I. JOHNSON, III,	MEMBER
NANCY SCHIFFER,	MEMBER

W. Va. 2008), affd. 570 F.3d 534 (4th Cir. 2009) (upholding authorization of 10(j) injunction proceeding by Acting General Counsel designated pursuant to the Vacancies Act). See *The Ardit Company*, 360 NLRB No. 15 (2013).