

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

NEW YORK PARTY SHUTTLE, LLC

and

Case 02-CA-073340

FRED PFLANTZER

ORDER¹

The Petition to Revoke subpoenas duces tecum B-733367, B-733371, B-733372, B-733373, and B-733374 is denied as untimely. Section 11(1) of the Act and Sections 102.31(b) and 102.111 of the Board's Rules and Regulations require that a petition to revoke an investigative subpoena must be filed within 5 days after the date of service of the subpoena. The subpoenas here were served on March 27, 2015. Thus, the petition, which was filed on April 7, 2015, is untimely.

In addition, even assuming that the petition was timely filed, it is lacking in merit.² The subpoenas seek information relevant to the matters under investigation and describe 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 subpoenas.³ See

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

² Member Miscimarra would deny the petition to revoke solely on the ground that it was untimely filed.

³ Although the Board's underlying Decision and Order, 359 NLRB No. 112 (2013), enf. No. 13-60364 (5th Cir. 2013), was decided by a panel that included two persons whose appointments to the Board were held to be invalid by the United States Supreme Court in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), the Fifth Circuit's Order upholding the Board's Decision and Order became final prior to the Supreme Court's decision in *NLRB v. Noel Canning*, supra. In these circumstances, we regard the matters finally resolved by the court of appeals as res judicata in this proceeding. See *Chicot County*

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. June 12, 2015.

MARK GASTON PEARCE,	CHAIRMAN
PHILIP A. MISCIMARRA,	MEMBER
KENT Y. HIROZAWA,	MEMBER

Drainage District v. Baxter State Bank, 308 U.S. 371, 374-378 (1940); *Nemaizer v. Baker*, 793 F.2d 58, 65 (2d Cir. 1986) (cited with approval in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010)); see also *The Lorge School*, 355 NLRB 558, 558 fn. 1 (2010).

Moreover, under Sec. 10(e) of the Act, the Board has no jurisdiction to modify an Order that has been enforced by a court of appeals because, upon the filing of the record with the court of appeals, the jurisdiction of that court is exclusive and its judgment and decree are final, subject to review only by the Supreme Court. *Scepter Ingot Castings, Inc.*, 341 NLRB 997, 997 (2004) (citing cases), *enfd. sub nom. Scepter, Inc. v. NLRB*, 448 F.3d 388 (D.C. Cir. 2006). Sec. 10(e) states, in relevant part: "Upon the filing of the record with [the United States court of appeals] the jurisdiction of the court shall be exclusive and its judgment and decree shall be final," except for potential further review by the Supreme Court. 29 U.S.C. § 160(e).