

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

JBS USA, LLC

and

Cases 07-CA-159023
07-CA-165946

SHIQUITA MOORE

and

07-CA-160978

EARL MOORE

and

07-CA-162382

SHARRELL MOORE

and

07-CA-163155

EARLINIA MOORE

ORDER¹

The Employer's Petition to Revoke Subpoena Duces Tecum No. B-1-PPGNN9 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.² Further, the

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

² In considering the petition to revoke, we have evaluated the subpoena in light of the Region's statements that, based on additional information provided by the Employer, the only outstanding subpoena requests are paragraphs 3 and 6. As to paragraph 6, it appears from the Region's opposition to the petition to revoke that the Region seeks information only for the period from January 1, 2014 through December 24, 2015. Accordingly, for purposes of this order, we treat the subpoena as having been amended to that effect. To the extent that the Petitioner has provided some of the requested material, it is not required to produce that information again, provided that the Petitioner accurately describes which documents under subpoena it has already provided, states whether those previously-provided documents constitute all of the requested documents, and provides all of the information that was subpoenaed.

Petitioner has failed to establish any other legal basis for revoking the subpoena.³ 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).

Dated, Washington, D.C., March 29, 2016

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

LAUREN McFERRAN, MEMBER

Further, to the extent that the subpoena encompasses some documents that the Petitioner believes in good faith to be subject to the attorney-client privilege or the attorney work product doctrine, this Order is without prejudice to the Petitioner's prompt submission of a privilege log to the Region identifying and describing each such document, and providing sufficient detail to permit an assessment of the Petitioner's claim of privilege or protection. The Petitioner is directed to produce all responsive documents in its possession not subject to any good-faith claim of privilege or protection.

³ The Employer's argument that subpoena paragraph 3 should be revoked because the underlying unfair labor practice charge is barred by Sec. 10(b) is without merit. Issues regarding Sec. 10(b) are generally not considered in an investigative subpoena context. See, e.g., *NLRB v. The Bakersfield Californian*, 128 F.3d 1339, 1341 (9th Cir. 1997) ("Like other defenses to an unfair labor practice complaint, a section 10(b) statute of limitations defense is not properly evaluated in a subpoena enforcement proceeding").