

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES, SAN FRANCISCO BRANCH OFFICE

SHAMROCK FOODS COMPANY

and

Case 28-CA-167910
28-CA-169970

BAKERY, CONFECTIONARY, TOBACCO
WORKERS' AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL
UNION NO. 232, AFL-CIO

ORDER

Respondent's petition to revoke General Counsel's subpoena duces tecum B-1-RNVJ47 (the subpoena) is denied.

The petition to revoke is denied, essentially for the reasons stated in the General Counsel's opposition. Accordingly, Respondent must make a good faith effort to locate and produce documents responsive to the subpoena. This does not mean Respondent must locate and produce all documents where the additional documents would be merely duplicative or cumulative. See FRCP 26(b)(2)(C) and 45(d)(3)(A); and *Duncan & Son Lines*, unpub. Board order issued Sept. 5, 2012 (2012 WL 3862635), at n. 2, invalidated on other grounds *Noel Canning v. NLRB*, 134 S.Ct. 2550 (2014).

To the extent Respondent claims that subpoena was served only nine business days prior to the hearing, the objection is denied. Nine days is not an unreasonable time period. See *McAllister Towing & Transportation Co.*, 341 NLRB 394, 397 (2007), enfd. 156 Fed. Appx. 386 (2d Cir. 2005). Respondent must make a good faith effort to locate and produce the subpoenaed documents, no later than May 24, 2016. To that extent, Respondent's Custodian of Records, or another qualified witness, should be prepared to testify as necessary to authenticate any and all documents.

To the extent Respondent claims that the subpoena is overly broad and burdensome, the objection is denied. Respondent's bare assertion is insufficient, and Respondent must make a good faith effort to locate and produce documents responsive to the requests. Cf. *McAllister Towing*, supra. To the extent Respondent claims that it is overbroad and unduly burdensome to produce "all" documents, the objection is denied. The subpoena actually specifies the scope of each request, and Respondent must make a good faith effort to locate and produce documents responsive to the request.

To the extent Respondent claims that any responsive documents are protected by the attorney client privilege or work product doctrine, it retains the right to withhold them. However, in that event, Respondent must submit a privilege log setting forth the specific facts

necessary to evaluate the claim. See FRCP 26(b)(5) and 45(e)(2)(A); *NLRB v. Sanders-Clark & Co., a McDonald's Franchisee*, 2016 U.S. Dist. LEXIS 57547 (C.D. Calif. April 25, 2016); *Strategic Materials, Inc.*, 08-CA-149572, unpub. Board order issued Aug. 24, 2015 (2015 WL 5025399); and *Chenega Integrated Mission Support, LLC*, 28-CA-111598, unpub. Board order issued June 2, 2014 (2014 WL 2466332). See also par. 5 of the subpoena's "Definitions and Instructions."

To the extent Respondent claims that the subpoena requests confidential, proprietary and non-public financial information, the objection is denied. Respondent must establish "good cause" under FRCP Rule 26(c), or that disclosure would cause serious harm. Any motion must contain specific facts and reasoning. See *Serrano v. Cintas Corp.*, 699 F.3d 884, 901 (6th Cir. 2012), cert. denied, 134 S. Ct. 92 (2013); *Shingara v. Skiles*, 420 F.3d 301, 306 (3d Cir. 2005); *Foltz v. State Farm Mutual Automobile Insurance Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003); and *In re Terra Intern., Inc.*, 134 F.3d 302, 306, (5th Cir. 1998)

To the extent Respondent claims that the subpoena seeks documents not in its possession, custody, or control, including documents in the possession of third parties, the objection is denied. The subpoena specifically states that the General Counsel seeks only those documents in Respondent's possession.

To the extent Respondent claims that the subpoena seeks documents which are not relevant to the subject matter of this action, the objection is denied. The subpoenaed information sought relates to the complaint in this matter and/or provides background information, or other potentially relevant information. See NLRB Rules and Regulations, Sec. 102.31(b); and *Perdue Farms*, 323 NLRB 345, 348 (1997) (the information must be "reasonably relevant"), affd. in relevant part 144 F.3d 830, 833-834 (D.C. Cir. 1998).

To the extent that Respondent claims that the subpoena imposes an improper time period, the objection is denied. The time period is reasonable. See *Machinists Lodge 1424 (Bryan Mfg. Co.) v. NLRB*, 362 U.S. 411, 414-429 (1960); and *Monongahela Power Co.*, 324 NLRB 214, 214-215 (1997) (evidence may be admitted concerning events outside the Sec. 10(b) 6-month limitations period where the events are relevant as background or regarding the respondent's motivation).

Specific Objections

To the extent that Respondent claims that the subpoena request no. 8 is overbroad, the objection is denied based on the General Counsel's amendment of the subpoena request (GC opposition at page 12).

To the extent that Respondent claims that subpoena requests no. 10 through 16 are barred by collateral estoppel and Section 10(b) of the National Labor Relations Act, the objection is denied. At this point of the proceedings, the documents sought are reasonably relevant.

To the extent that Respondent claims that subpoena request no. 25 is overbroad, the objection is denied because the information sought is reasonably relevant as to how the supervisor(s) treated other employees.

Dated, May 23, 2016



Amita Baman Tracy
Administrative Law Judge

Served by facsimile and email upon the following:

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DiCrocco, Brian

From: noreply@nlrb.gov
Sent: Monday, May 23, 2016 11:20 AM
To: DiCrocco, Brian
Cc: SM-Nass
Subject: Re: [NASS] Scan-to-FAX Delivery - [REPORT]
Attachments: MF5743494A72A953D628EC.tif

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Number of faxes 3
 thereof successfully sent: 2
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Number of pages 4
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Sent 2016-05-23-14.19.10
Remote CSID: 510 3371023
Duration 49 sec.
Status OK
Reason

Fax number +16026402178
Sent 2016-05-23-14.19.20
Remote CSID:
Duration 0 sec.
Status WRONG_NO
Reason Wrong number

Fax number +13108208859
Sent 2016-05-23-14.19.28
Remote CSID: BakerHostetler
Duration 87 sec.
Status OK
Reason

DiCrocco, Brian

From: DiCrocco, Brian
Sent: Monday, May 23, 2016 11:05 AM
To: Demirok, Sara; ninesta@bakerlaw.com; TDawson@bakerlaw.com; David Rosenfeld
Subject: 28-CA-167910 - SHAMROCK FOODS COMPANY: ORDER
Attachments: Shamrock subpoena order.pdf

Dear Counsel,

Please see the attached order.

Brian C. DiCrocco, Legal Tech.
NLRB Division of Judges San Francisco
415-356-5256

