

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

**STRATEGIC STAFFING SOLUTIONS AND  
DIRECTV, AS A JOINT EMPLOYER**

and

**Case 31-CA-159135**

**ANIL AGRAWAL**

**ORDER<sup>1</sup>**

The petition filed by Strategic Staffing Solutions to revoke subpoena duces tecum B-1-OY04OF and the petition filed by DirecTV to revoke subpoena duces tecum B-1-OXVSFP are denied. 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 Petitioners have failed to establish any other legal basis for revoking the subpoenas.<sup>2</sup> 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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<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>2</sup> To the extent that the subpoenas duces tecum encompass some documents that the Petitioners have already produced, those documents need not be produced again, provided that the Petitioners accurately describe which documents under subpoena they have already provided, state whether those previously-supplied documents constitute all of the requested documents, and provide all of the information that was subpoenaed.

In addition, to the extent that the subpoenas encompass some documents that the Petitioners believe in good faith to be subject to the attorney-client privilege, the attorney work-product doctrine, or privacy concerns, this Order is without prejudice to the Petitioners' prompt submission of privilege logs to the Region identifying and describing each such document, and providing sufficient detail to permit an assessment of their claim of privilege or protection. The Petitioners are directed to produce all responsive documents in its possession not subject to any good-faith claim of privilege or protection.

Contrary to our colleague, as discussed at greater length in the Board's Order in *Dolchin Pratt, LLC d/b/a Jimmy John's Gourmet Sandwiches*, 05-CA-135334 (Nov. 6,

Dated, Washington, D.C., June 8, 2016

MARK GASTON PEARCE, CHAIRMAN

KENT Y. HIROZAWA, MEMBER

Member Miscimarra, dissenting in part:

Consistent with Sec. 11(1) of the Act and Sec. 102.31(b) of the Board's Rules and Regulations, as stated in my dissent in *Dolchin Pratt, LLC d/b/a Jimmy John's Gourmet Sandwiches*, 05-CA-135334 (Nov. 6, 2015), I believe that a subpoena seeking documents pertaining to an alleged joint-employer and/or single-employer status of a charged party "requires more . . . than merely stating the name of a possible single or joint employer on the face of the charge." *Id.* at 3. In particular, the General Counsel must be able to articulate "an objective factual basis supporting such an inquiry." *Id.* at 4–5. Cf. Casehandling Manual Sec. 10054.4 (stating that "additional and more complete evidence, including all relevant documents," should be obtained if "consideration of the charging party's evidence and the preliminary information from the charged party *suggests a prima facie case*") (emphasis added).

Here, the charge alleging an unlawful termination refers to Strategic Solutions and DirecTV, as a "joint employer," without additional, factual information about the joint employer allegation. Thus, applying the above-mentioned principles, I would find that

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2015), we find that the subpoenas lie well within the scope of the Board's broad investigative authority, which extends not only to the substantive allegations of a charge, but to "*any matter under investigation or in question*" in the proceeding. 29 U.S.C. § 161(1) (emphasis added); Sec. 102.31(b) of the Board's Rules. Moreover, nothing in Sec. 11 of the Act or Sec. 102.31(b) of the Board's Rules can be read to impose a requirement that the Regional Director articulate "an objective factual basis" in order to compel the production of information that is necessary to investigate a pending unfair labor practice charge. Nor can such a requirement be justified on the basis of Sec. 10054.4 of the Board's Casehandling Manual, which does not relate to or mention subpoenas.

the General Counsel has failed to articulate an objective factual basis for subpoenaing documents regarding the possible joint employer relationship between Strategic Staffing Solutions and DirecTV. I would therefore grant the petitions with respect to the paragraphs that seek information regarding joint employer status, without prejudice to the ability of the General Counsel to issue new subpoenas seeking this information, if he can establish an objective factual basis supporting such an inquiry, beyond the mere allegation in the charge that Strategic Solutions and DirecTV are a joint employer.<sup>3</sup>

Dated, Washington, D.C., June 8, 2016

PHILIP A. MISCIMARRA, MEMBER

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<sup>3</sup> As I have stated elsewhere, I do not agree with the Board's revised standard for assessing joint-employer status under the Act. See *BFI Newby Island Recyclery (Browning-Ferris Industries of California)*, 362 NLRB No. 186, slip op. at 21-50 (2015) (Members Miscimarra and Johnson, dissenting).