

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

**DYNCORP INTERNATIONAL LLC**

**and**

**Cases 15-CA-165803**

**INTERNATIONAL UNION OF  
ELECTRICAL AND COMMUNICATIONS  
WORKERS OF AMERICA, LOCAL 83770**

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

The Employer's Petition to Revoke Subpoena Duces Tecum No. B-1-QGNDDZ is denied.<sup>2</sup> 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.<sup>3</sup> Further, the

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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> Unlike the Employer, we interpret paragraph 6 of the subpoena to require production of the personnel files of those employees identified in paragraph 5, i.e., those employees investigated for time and attendance reporting errors or misconduct. So interpreted, paragraph 6 is not overbroad.

Member Miscimarra agrees with the Employer's argument that paragraph 6 is overbroad, and would grant the Employer's petition to revoke as to paragraph 6 to the extent it requires the production of personnel files of employees other than those whose alleged "errors or misconduct in reporting time and attendance" were the focus of Employer investigations into such alleged errors or misconduct during the period from July 2012 to the present. As noted above, however, the Board majority interprets paragraph 6 only to require the production of personnel files for employees whose errors or misconduct were the focus of Employer investigations as described above. Consequently, regardless of whether paragraph 6 was objectionable as originally drafted, the Employer need not produce personnel files for the additional employees described above.

<sup>3</sup> To the extent that the subpoena encompasses some documents that the Employer 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 Employer'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 Employer's claim of privilege or protection. The Employer is directed to produce all responsive documents in its possession not subject to any good-faith claim of privilege or protection.

Employer has failed to establish any other legal basis for revoking the subpoena.<sup>4</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).<sup>5</sup>

Dated, Washington, D.C., June 23, 2016

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

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<sup>4</sup> We reject the Employer’s argument that the subpoena should be revoked because it was improperly served. The Region served the subpoena in accordance with the Board’s Rules and Regulations, Sec. 102.113(c), Service of subpoenas, which provides in relevant part: “Subpoenas shall be served upon the recipient either personally or by registered or certified mail . . . , or by leaving a copy thereof at the principal office or place of business of the person required to be served.” Further, service was effective when the Region mailed the subpoena via certified mail to the Employer’s business address. *Best Western City View Motor Inn*, 327 NLRB 468, 468–469 (1999) (proof that subpoena was mailed sufficient to prove service; proof of receipt is immaterial); *National Automatic Sprinklers*, 307 NLRB 481, 481 fn. 1 (1992) (service of a subpoena is accomplished by deposit in the mail). In addition, we observe that no prejudice resulted from the purported impropriety in service, as the Employer filed a timely petition to revoke.

<sup>5</sup> The Region’s motion to supplement the record is granted. The Region’s motion to strike the Employer’s response to the Region’s opposition is denied. The service issue regarding the Employer’s response, described in the motion to strike, has been resolved. Further, it is the Board’s practice to follow *Baker Electric*, 330 NLRB 521 (2000), with regard to petitions to revoke investigative subpoenas and to allow the moving party to file a reply brief without first moving for special leave of the Board “just as a party filing exceptions under Sec. 102.46 is permitted to file such a brief.” *Id.* at 521 fn. 4.