

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

AUTOZONE, INC.,

and

Case 10-CA-169095

SEAN CALLAN

ORDER¹

The Employer's Petition to Revoke Subpoena Duces Tecum No. B-1-QYWA45 is denied.² 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. Further, the Employer has failed to establish any other legal basis for revoking the subpoena. See

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

² Member Miscimarra concurs with his colleagues' denial of the Employer's Petition to Revoke as to subpoena request no. 1, included in a subpoena dated March 25, 2016, which sought "[t]he Employer's current employee handbook in its entirety and copies of all policies referred to in the handbook." Member Miscimarra concurs with the denial of the Employer's Petition to Revoke as to subpoena request no. 1 because this request reasonably encompasses matters "related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board," and there is no requirement that a charging party have personal knowledge of the violations alleged in a charge. See *NLRB v. Fant Milling Co.*, 360 U.S. 301, 308–309 (1959); Sec. 11(1) (affording the Board access to "any matter under investigation or in question"); *Operating Engineers Local 39 (Kaiser Foundation)*, 268 NLRB 115, 116 (1983) ("The simple fact is that anyone for any reason may file charges with the Board."). However, Member Miscimarra believes the Respondent correctly notes that "[t]he NLRB . . . does not have the authority to initiate the investigation of employer policies on its own." See, e.g., *Leukemia and Lymphoma Society*, 363 NLRB No. 123, slip op. at 1-2 (2016) (Member Miscimarra, concurring) (citing *Allied Waste Services of Massachusetts, LLC*, 01-CA-123082, -126843, 2014 WL 7429200 (Dec. 31, 2014)). Therefore, in Member Miscimarra's view, the denial of Respondent's petition to revoke is without prejudice to any defenses that may be available to the extent that any charge allegations regarding alleged overly broad handbook provisions were initiated by representatives of the Board or the General Counsel. *Id.*

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).³

Dated, Washington, D.C., June 24, 2016

PHILIP A. MISCIMARRA,	MEMBER
KENT Y. HIROZAWA,	MEMBER
LAUREN MCFERRAN,	MEMBER

³ In ruling on the petition to revoke, we decline the Region’s request to expand the scope of the subpoena by requiring the Employer to produce “any” employee handbooks and cited policies, rather than just the “current” handbook and policies as stated in the subpoena. See Region’s Opp., p. 7. This ruling is without prejudice to the Region’s issuing a new subpoena for any additional documents, as needed.