

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

**LA JOMAC GROUP, INC.,
JAG PREMIER, INC.,
DATA PROCESSING SPECIALISTS,
PANGEA INDUSTRIES LLC,
BARRIOS STREET REALTY, LLC, AND
PANGEA ENTERPRISES, INC.,**

and

**Cases 15-CA-137333
15-CA-137337**

CHARLES LEBLANC

ORDER¹

The petition filed by Pangea Enterprises, Inc. to revoke subpoena duces tecum B-1-RV9VRB 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. Further, the Employer has failed to establish any other legal basis for revoking the subpoena.² 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).

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

² To the extent that the subpoenas duces tecum encompass some documents that the Petitioner has already produced, those documents need not be produced again, provided that the Petitioner accurately describes which documents under subpoena it has already provided, states whether those previously-supplied documents constitute all of the requested documents, and provides all of the information that was subpoenaed.

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, 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

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

MARK GASTON PEARCE, CHAIRMAN

LAUREN McFERRAN, MEMBER

Member Miscimarra, dissenting:

Consistent with Sec. 11(1) of the Act and Sec. 102.31(b) of the Board's Rules and Regulations, and 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 charges –alleging unlawful refusals to consider for hire, and refusals to hire— name Pangea Enterprises, Inc., and four other entities as joint employers, without additional, factual information regarding the entities' joint employer status. In its opposition to the petition to revoke, the General Counsel argues that the requested documents are relevant to investigating the alleged joint employer relationship between

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.

these entities. Applying the above-mentioned principles, I would find that the General Counsel has failed to articulate an objective factual basis for subpoenaing documents regarding the possible joint employer relationship between Pangea Enterprises, Inc., and the other entities named in the charges. I would therefore grant the petition since the subpoena exclusively seeks information regarding joint employer status, without prejudice to the ability of the General Counsel to issue a new subpoena seeking this information, if he can establish an objective factual basis supporting such an inquiry, beyond the mere allegation in the third amended charges that Pangea Enterprises, Inc. is a joint employer with the other charged parties.³

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

PHILIP A. MISCIMARRA, MEMBER

³ 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).