

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES**

STERN PRODUCE COMPANY, INC.

and

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 99**

**Cases 28-CA-163215
28-CA-166351
28-CA-168680**

**ORDER GRANTING CHARGING PARTY'S AND GENERAL COUNSEL'S
PETITION TO REVOKE SUBPOENA DUCES TECUM B-1-SQ4KSZ**

This matter is before me on the United Food and Commercial Workers Union, Local 99's (Charging Party or the Union) Petition to Revoke Subpoena Duces Tecum as well as the General Counsel's Petition to Revoke in Part Subpoena Duces Tecum B-1-SQ4KSZ. Stern Produce Company, Inc. (Respondent) filed its response to the General Counsel's Petition to Revoke. For the reasons set forth below, the Union's Petition is GRANTED.

The Regional Director for Region 28 (Regional Director) issued a consolidated complaint alleging that Respondent violated Sections 8(a)(1) and (5) of the National Labor Relations Act (the Act) when it made multiple threats, promises of benefits and unspecified reprisals to employees, interrogated employees, created an impression among employees that their union activities were under surveillance, promulgated rules that effectively prohibited employees from discussing the Union, interfered with a Board investigation and failed to recognize the Union.

While the date of the subpoena is unclear, Respondent issued Subpoena Duces Tecum B-1-SQ4KSZ (subpoena) requesting five (5) categories of documents from the Union. On August 29, 2016, the Union filed a Petition to Revoke objecting to all of the subpoenaed requests. Specifically, the Union objects on grounds that the requests seek irrelevant documents, are overbroad and unduly burdensome, violate employees' privacy rights, and/or are privileged because they would reveal internal Union matters/bargaining strategies. Additionally, the General Counsel also moved to revoke Request 3 of the subpoena on similar grounds.

For the reasons set forth below, I agree with the Union that Respondent's requests are overbroad, seek documents that are irrelevant to the issues germane to this case, and most importantly, call for documents protected from disclosure because they seek the Union's internal bargaining strategies, impressions and deliberations. *See Berbiglia, Inc.*, 233 NLRB 1476, 1495 (1977), *see also, Patrick Cudahy, Inc.*, 288 NLRB 968, 971 (1988).

Requests 1 and 2:

Request 1 seeks all non-privileged documents sent by Union agents and/or representatives "relating to any organizing campaign at Stern." However, I agree with the Union that these document requests are overbroad, not limited in time or scope, not narrowly tailored to request relevant information, are irrelevant to the issues germane to this case, and encompass documents regarding the Union's internal deliberations and bargaining strategies. Under *Berbiglia*, these documents are privileged from disclosure. *Id.* ("if collective bargaining is to work, the parties must be able to formulate their positions and devise their strategies without fear of exposure."), *see also Champ Corp.*, 291 NLRB 803, 817 (1988), *enfd.* 933 F.2d 688 (9th Cir. 1990), *cert denied*, 502 U.S. 957 (1991)(judge cited *Berbiglia*, as well as the subpoena's over breadth and facial deficiency as grounds for revoking respondent's subpoena seeking all union notes or other records describing or recording collective bargaining sessions). Accordingly, I grant the Petition regarding Request 1.

Requests 2 and 3:

Request 2 asks for all non-privileged documents and correspondence sent by the Union relating to this case. Request 3 seeks documents in the Union's possession that originated from Respondent or "contain any Stern information, including documents and correspondence produced by current or former employees of Stern." However, both requests are problematic for several reasons. First, both requests are overly broad and not limited in time or scope. In essence, Respondent seeks the entire universe of documents, including, copies of the pleadings the Union received in this case, in addition to any document that has Respondent's name on it. Second, I do not see how the production of any of these documents or information is in any way relevant to the issues in this case. Third, to the extent Respondent requests correspondence and documents that the Union has which in any way relate to Stern, those documents may be equally available to Respondent. Finally, because these requests are unlimited in scope, they also encompass irrelevant information and could include documents that relate to internal Union bargaining information, strategies and deliberations which are protected from disclosure under *Berbiglia*, *supra*. Accordingly, I grant the Union's Petition as to Request 2 and the Union's and the General Counsel's Petition as to Request 3.

Request 4:

Request 4 seeks for information on how the Union "trains, educates, and/or instructs its campaign organizers within the past five years." However, again, the documents requested herein are not relevant to any of the issues germane to this complaint. Rather, I agree with the Union that, given the complete lack of relevance between the issues in this case and the requested information this request is tantamount to a "fishing expedition" which is an improper use by the employer of a Board subpoena. Accordingly, I grant the Petition as to Request 4.

Request 5:

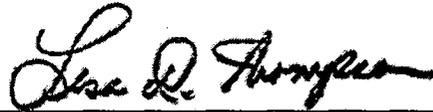
Similarly, I find that Request 5 seeks irrelevant, immaterial information not germane to

the complaint allegations. Request 5 asks for documents and correspondence relating to several prior ULP and representation cases against Stern. However, none of these documents has anything to do with the allegations in this case. Moreover, absent some explanation of relevance, I find that Respondent is essentially attempting to unlawfully re-litigate issues previously decided by the Board.¹ In sum, I grant the Petition as to this request.

Accordingly, the Charging Party's and the General Counsel's Petition to Revoke subpoena B-1-SQ4KSZ is **GRANTED**.

SO ORDERED.

Dated: September 1, 2016



Lisa D. Thompson
Administrative Law Judge

Served by facsimile to:

For the General Counsel:

Fernando Anzaldua, Esq.

Fax: (602) 640-2178

Sara Demirok, Esq.

NLRB – Region 28

For the Respondent Stern Produce:

John Doran, Esq.

Fax: (480) 624-2029

Patrick Scully, Esq.

Fax: (303) 298-0940

Sherman & Howard, L.L.C.

For the Charging Party UCFW:

David Barber, Esq.

Fax: (415) 597-7201

Davis Cowell & Bowe

¹ See *Gross School Bus Service*, 356 NLRB No. 81 (2011), citing *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941) (cannot re-litigate representation cases in unfair labor practice case).



DiCrocco, Brian

From: noreply@nlrb.gov
Sent: Thursday, September 01, 2016 2:45 PM
To: DiCrocco, Brian
Cc: SM-Nass
Subject: Re: [NASS] Scan-to-FAX Delivery - [REPORT]
Attachments: MF57C8A0D441C674C301B5.tif

Retarus job id: MF57C8A0D441C674C301B5

Number of faxes 4
 thereof successfully sent: 4
 thereof failed with error: 0
Number of pages 3
Resolution Low

Fax number +14806242029
Sent 2016-09-01-17.42.58
Remote CSID: FAXAGENT
Duration 81 sec.
Status OK
Reason

Fax number +13032980940
Sent 2016-09-01-17.42.58
Remote CSID: FAXAGENT
Duration 81 sec.
Status OK
Reason

Fax number +14155977201
Sent 2016-09-01-17.42.58
Remote CSID: 4155977201
Duration 41 sec.
Status OK
Reason

Fax number +16026402178
Sent 2016-09-01-17.42.58
Remote CSID: 0016026402178
Duration 40 sec.
Status OK

Reason
