

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

**INTERNATIONAL PROVISIONS, INC.  
d/b/a HOWARD'S SNACKS**

**and**

**Case 01-CA-178461**

**ROSAURA LOPEZ GOMEZ**

**ORDER**

The Employer's Petition to Revoke subpoena duces tecum B-1-U3TO91 is denied.

The subpoena seeks information relevant to the matters 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>1</sup> Further, the Employer has failed to

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<sup>1</sup> With respect to the Employer's contention that the Regional Director improperly issued the subpoena after he had already authorized issuance of a complaint, we note that the General Counsel is vested under Sec. 3(d) of the Act with exclusive prosecutorial authority and, as such, controls the theory of the case and the scope of the investigation. See *NLRB v. Fant Milling Co.*, 360 U.S. 301, 308 (1959) ("Once its jurisdiction is invoked the Board must be left free to make full inquiry under its broad investigatory power in order properly to discharge the duty of protecting public rights which Congress has imposed upon it.") (Internal citation omitted); *BCI Coca-Cola Bottling Company of Los Angeles*, 361 NLRB No. 75, slip op. at 5 fn.11 (2014) ("Deciding what steps to take before issuing complaint, including how to investigate the charge . . ." is within the General Counsel's unreviewable prosecutorial discretion). In any event, the Employer has not refuted the Regional Director's assertion that the Employer was informed that the Regional Director reconsidered his preliminary decision to authorize issuance of a complaint after receiving additional evidence from the Employer. Nor has the Employer refuted the Regional Director's assertion that he was continuing to seek evidence to evaluate the merits of the charge and the Employer's defenses before making a final determination on whether to issue a complaint.

Without passing on the breadth of the General Counsel's prosecutorial authority, and based on the facts currently before the Board, Acting Chairman Miscimarra joins in the denial of the Employer's petition to revoke. The Regional Director has not formally issued a complaint here, and the Employer has not presented evidence refuting the Regional Director's assertion that, at the time of the issuance of the subpoena, he had not yet made a final determination on whether to issue a complaint. For these reasons, and in the absence of evidence to the contrary, Acting Chairman Miscimarra believes the instant case fails to raise concerns similar to those addressed by former Member Hayes in *Voith Industrial Services, Inc.*, Cases 09-CA-075496, 09-CA-078747, et al., slip op. at 4 (2012) (Member Hayes, dissenting) ("I find troubling that the Acting General Counsel issued the 'investigative' subpoena after having filed the complaint, a time when the investigation should have been complete and the litigation phase of the proceedings underway").

establish any other legal basis for revoking the subpoena. 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).

Dated, Washington, D.C., February 28, 2017

PHILIP A. MISCIMARRA,                   ACTING CHAIRMAN

MARK GASTON PEARCE,                 MEMBER

LAUREN McFERRAN,                   MEMBER