

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

**GARGIULO PRODUCE**

and

**Case 22-CA-177431**

**LOCAL 108, RETAIL, WHOLESALE,  
AND DEPARTMENT STORE UNION,  
UNITED FOOD & COMMERCIAL WORKERS**

**ORDER**

The Employer's Petition to Revoke subpoena duces tecum B-1-TOMVSH 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. Further, the Employer has failed to establish any other legal basis for revoking the subpoena.<sup>1</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).

Dated, Washington, D.C., March 8, 2017.

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<sup>1</sup> In considering the petition to revoke, we have evaluated the subpoena in light of the Region's withdrawal of par. 3 due to the Employer's representation that no responsive documents exist, and the Region's statements that it no longer seeks documents pertaining to Peter Gargiulo in pars. 5 and 7 or Salvador Oliveros in par. 7, in light of the Employer's stipulation that those two individuals are supervisors within the meaning of Sec. 2(11) of the Act. We also acknowledge the Region's stipulation that the Employer may redact sensitive personal information, such as Social Security numbers. Contrary to our dissenting colleague's assumption, the Region's modification of the subpoena does not establish that the subpoena initially was overbroad, and we find that it was not. Instead, it appears that the Region's modifications are designed to promote efficiency and provide greater clarity to the parties. If after such redactions the Employer still has legitimate privacy concerns as to specific information or documents sought by the subpoena, it is free to identify such information or documents and seek a confidentiality agreement from the Region. Finally, it appears that the reference to "personal records" in par. 2 is a typographical error, and we have interpreted it as a reference to *personnel* records.

MARK GASTON PEARCE, MEMBER  
LAUREN McFERRAN, MEMBER

ACTING CHAIRMAN MISCIMARRA, dissenting in part.

I respectfully dissent in part from the Board majority's denial of the Employer's petition to revoke, which in part reflects the Region's statement, in its brief opposing the petition to revoke, that "the Region does not seek, and the Employer can redact, personal identification information such as employee Social Security numbers" contained in the subpoenaed personnel files. This statement in the Region's opposition brief is contradicted by the subpoena's specific instructions, which provide that the subpoena "contemplates production of responsive documents in their entirety, *without abbreviation, redaction, deletion or expurgation*" (emphasis added). Moreover, I disagree with the Board's practice that often permits an overly broad subpoena request to be "clarified" by the Region after a party has filed a meritorious petition to revoke, which then prompts the Board to deny the petition. In my view, this practice encourages the filing of subpoenas that are not appropriately tailored to matters under investigation, which in turn needlessly leads to Board intervention in many subpoena disputes that could have been avoided had the subpoena requests been crafted in a manner that appropriately conforms to matters relevant to the charge. Additionally, I believe this practice creates the appearance of unfairness by permitting one side (the Region's attorneys, who are representatives of the General Counsel) to avoid having a subpoena revoked by making an after-the-fact "change" that is communicated in briefing. Accordingly, in the instant case, I would grant the petition to revoke as to requests that were broad enough to encompass irrelevant and/or personal identification information,

notwithstanding the limitation expressed in the Region's opposition brief, without prejudice to the Region's right to issue new or amended subpoena requests that are narrower in scope.

PHILIP A. MISCIMARRA,                      ACTING CHAIRMAN