

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RPT COMMUNICATIONS LLC;  
SK CABLING SYSTEMS, LLC;  
TEKSYSTEMS MANAGEMENT, INC.; AND  
RICHARDSON TELECOMMUNICATIONS  
SERVICE, INC. AS ALTER EGOS/SINGLE  
EMPLOYERS AND AS A JOINT EMPLOYER

and

Case 29-CA-182088

COMMUNICATIONS WORKERS OF  
AMERICA

**ORDER**

The petition filed by TEKSystems Management, Inc. to revoke subpoenas duces tecum B-1-U28N2L and B-1-U22858X, and the petition filed by Richardson Telecommunications Service, Inc. to revoke subpoenas duces tecum B-1-U27LMJ and B-1-U27COB are denied.<sup>1</sup> The subpoenas seek information relevant to the matters under investigation and describe 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>2</sup> Further, the Petitioners have failed to establish any other legal basis for revoking the subpoenas. 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).<sup>3</sup>

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<sup>1</sup> The Region inadvertently issued two identical subpoenas to each Petitioner.

<sup>2</sup> We have evaluated the subpoenas in light of the Region's clarifications in its opposition briefs regarding pars. 3, 8 and 10 of each subpoena. (Opp. at 5, 6, 7).

<sup>3</sup> The Petitioners assert that no responsive documents exist for subpoena pars. 4, 5 and 9. The Petitioners are not required to produce evidence requested in the subpoenas that the Petitioners do not possess, but the Petitioners are required to conduct reasonable and diligent searches for all requested evidence, and as to requested evidence that the Petitioners determine that they do not

Dated, Washington, D.C., March 15, 2017.

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

Acting Chairman Miscimarra, dissenting in part:

Consistent with Section 11(1) of the Act and Section 102.31(b) of the Board’s Rules and Regulations, 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

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possess, the Petitioners must affirmatively represent to the Region that no responsive evidence exists.

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 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.

Further, although our colleague disagrees, we find that the subpoena requests are not overbroad or unrelated to matters under investigation merely because some of the requests may encompass locations other than New York City. Several of the requests of course do not seek documents beyond the New York City area at all insofar as they are limited to “the Employer’s facility,” which the subpoena defines as a particular facility located in New York, New York. Additionally, the Region’s offer to limit the scope of pars. 3, 8, and 10, to the New York City area, does not establish that the subpoena requests initially were overbroad or irrelevant, and we find that they are not. Rather, the Region’s modifications appear simply to promote efficiency and provide further clarity to the parties. Concerning those requests that do encompass locations other than New York City, we find that they comply with the requirements of Sec. 11(1) of the Act and Sec. 102.31(b) of the Board’s Rules, as the Region is investigating matters, such as the Employer’s corporate formation and ownership, that may require documents other than those that are directly related to the New York City operations.

objective factual basis supporting such an inquiry.” Id. at 4–5. Cf. Casehandling Manual Section 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 charge alleging violations of Section 8(a)(1), (2), and (3) refers to the Petitioners, along with additional Charged Parties RPT Communications LLC and SK Cabling Systems LLC, as alter egos/a single employer and joint employers, without additional, factual information about those allegations. Thus, 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 and single employer relationship between Richardson Telecommunications Service, Inc. and TEKSystems Management, Inc. I would therefore grant the petitions with respect to the paragraphs that seek information regarding single and joint employer status, without prejudice to the ability of the General Counsel to issue new subpoenas seeking this information, if he can establish an objective factual basis supporting such an inquiry, beyond the mere allegation in the charge that the Charged Parties are joint employers, alter egos and a single employer.<sup>4</sup>

Additionally, I respectfully dissent from the majority’s denial of the petitions to revoke as to requests that encompass locations other than New York City. When subpoena requests are overly broad or otherwise seek information that does not reasonably relate to matters under investigation, and when a subpoenaed party’s petition to revoke raises appropriate objections to the requests on that basis, I believe it is more appropriate for the Board to *grant* the petition to

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<sup>4</sup> 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).

revoke as to such requests, rather than denying the petition to revoke (as the majority does here) based on a change that was communicated only after the petition to revoke is under consideration by the Board. See Section 11(1) (stating the Board “shall revoke” any subpoena where “the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required”). Regarding the majority’s statement that the Region’s geographic clarification served “simply to promote efficiency and provide further clarity to the parties,” I believe these efforts must be undertaken *before* disputes regarding a subpoena’s scope are presented to the Board in a party’s petition to revoke. To the fullest possible extent, the parties should resolve document production matters without the Board’s intervention. Finally, granting the petitions to revoke in the circumstances presented here would be without prejudice to the potential issuance of new subpoenas that are appropriate in scope (subject to applicable time limits and other requirements set forth in the Act and the Board’s Rules and Regulations).

PHILIP A. MISCIMARRA,

ACTING CHAIRMAN