

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

FCA US LLC
Charged Party Employer

and

Case 08-CA-185825

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL 12
Charged Union

and

Case 08-CB-185835

MEE SANDERS, AN INDIVIDUAL,
Charging Party

**REGIONAL DIRECTOR'S SUR-REPLY TO FCA US LLC'S REPLY TO REGION 8
OPPOSITION TO PETITION TO REVOKE INVESTIGATIVE SUBPOENA DUCES
TECUM**

Counsel for the Regional Director files this Sur-Reply to FCA US LLC's (Charged Party Employer) Reply to the Region's Opposition to the Employer's Petition to Revoke the Subpoena Duces Tecum B-1-V78WXZ. (Exhibit 1)

The Regional Director for Region 8 issued the investigative subpoena duces tecum (subpoena) to the Charged Party Employer on January 30, 2017, and it was served by certified mail on the same date. The Charged Party Employer filed its Petition to Revoke Subpoena Duces Tecum on February 6, 2017. The Regional Director filed its Opposition to the Charged Party Employer's Petition to Revoke (Opposition) on February 16, 2017. On March 6, 2017, the Charged Party Employer filed a Reply to the Regional Director's Opposition to the Charged Party Employer's Petition to Revoke. (Reply)

The Regional Director re-states herein its position and all general and specific arguments made in the Opposition. The documents sought, as modified by the Region in the Opposition are relevant and necessary to complete the investigation of the unfair labor practice charges filed by Mee Sanders (Charging Party). The Charged Party Employer should be required to provide the requested documents to the Region as directed by the modified subpoena.

The Region's Modifications to its Subpoena are not vague, overbroad, unduly burdensome, or irrelevant

As noted by the Charged Party Employer, the Region, in its Opposition modified its entire request to limit the subpoena to cover the Toledo, Ohio Assembly Complex, the facility where the Charging Party is employed. Additionally, the Charged Party Employer's Reply erroneously claims that the modification made to Item 2 of the subpoena is not limited to any particular launch position. The modified request, however, clarifies that the subpoena seeks information related to the Toledo, Ohio JL/JT launch positions, the positions at issue in the investigation. Moreover, the Region significantly narrowed its time frame for documents subject to production from five years to five months. This period coincides with the time frame that the Charging Party applied for and was interviewed for those positions. The Region is entitled to those underlying documents that are narrowly tailored to seek information necessary to properly assess the Charged Party Employer's assertion that it had a legitimate reason for not selecting the Charging Party for the JL/JT launch positions. See *EEOC v. Maryland Cup Corp.*, 785 F.2d 471, 478-479 (4th Cir.), cert. denied 479 U.S. 815 (1986).

As to the modified subpoena request in Item 5 of the Opposition, the Charged Party Employer asserts that it should be precluded from providing the department, location, and daily job assignments that the Charging Party worked for a period of five months based on responses it provided to the Region in its position statement. The Charged Party Employer's position is

contrary to other information provided in the investigation. The subpoenaed documents are necessary to evaluate the parties' assertions made during the investigation.

Finally, the Charged Party Employer asserts that the Region's request in Item 4 of its subpoena is irrelevant to any charge allegation, and that those documents were not requested during the investigation. Contrary to the Charged Party Employer's assertion, the Region's letter requesting its position statement and evidence dated November 28, 2016 (Exhibit A of Charged Party Employer's Reply), sought documents which concerned its decision making process regarding the elimination of the Charging Party's "coach" position.

In its position statement and a subsequent e-mail dated January 17, 2017 (Exhibit B of Charged Party Employer's Reply), the Charged Party Employer contended that it made the decision to eliminate the Charging Party's coach position based on progress made by certain employees, as well as accomplishments in reaching company benchmarks. Based on this response, the request for information tracks the Charged Party Employer's defenses, and request that the Charged Party provide "work performance and cost analysis documents", only if they were used to eliminate the Charging Party's coach position. This information is relevant to the allegations contained in the charge.

Accordingly, for the reasons set forth in its Opposition and reasons mentioned-above, the Regional Director respectfully submits that the Charged Party Employer's Petition to Revoke the Investigative Subpoena Duces Tecum be denied.

Respectfully submitted,

/s/ Cheryl Sizemore

Cheryl Sizemore

Counsel for the Regional Director of Region 8

National Labor Relations Board, Region 8

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Dated at Cleveland, Ohio on this 24th day of March 2017.

CERTIFICATE OF SERVICE

The undersigned hereby attests that the Sur-Reply to FCA US LLC's Reply to Region 8 Opposition to Petition to Revoke Investigative Subpoena Duces Tecum has been filed electronically and served by electronic mail on March 24, 2017 on the following:

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MEE SANDERS

Charging Party

**REPLY TO THE REGION'S OPPOSITION TO FCA'S
PETITION TO REVOKE SUBPOENA DUCES TECUM NO. B-1-V78WXZ**

Charged Party FCA US LLC ("FCA") files this Reply to the Region's Response in Opposition to FCA US LLC's Petition to Revoke Investigative Subpoena Duces Tecum No. B-1-V78WXZ.

INTRODUCTION

On January 30, 2017, Investigative Subpoena Duces Tecum No. B-1-V78WXZ issued to FCA in this matter ("Subpoena"). On February 6, 2017, FCA timely filed FCA US LLC's Petition to Revoke the Subpoena ("Petition to Revoke"), raising several objections: 1) the Subpoena sought confidential, proprietary, and privileged information; 2) the Subpoena requests were non-specific and vague; 3) inability to comply with the Subpoena by the stated date given.

Exhibit 1



the volume of search necessary; 4) the Subpoena requests were unduly burdensome; 5) the Subpoena requests were overbroad; 6) the Subpoena sought information not relevant to charge allegations or to FCA's defenses or potential defenses; 7) the Subpoena was improperly issued as it sought information for which the Region had not attempted voluntary production. On February 16, 2017, the Region filed its Response in Opposition to FCA US LLC's Petition to Revoke ("Opposition"). In its Opposition, the Region proposed minor and insufficient modifications to the Subpoena which fail to adequately remedy the Subpoena's deficiencies, fail to clarify its vague and non-specific requests, and fail limit the requests to relevant information. In addition, the Opposition fails to provide adequate legal support for the Region's expansion of the investigation beyond the scope of the charge through the issuance of the Subpoena. Accordingly, the Petition to Revoke should be granted in its entirety

A. Failure to Seek Voluntary Cooperation and Expansion Beyond the Scope of the Investigation

Mee Sanders ("Charging Party") alleges FCA removed her as a team leader coach, denied her a launch position, denied her a daily floater position, denied her a daily team leader job, and "attempted" to issue her discipline because of her protected concerted activity. On December 19, 2016, FCA filed a position statement in the above-reference matter, denying all of the allegations and producing information requested by the Region. Of note, in its November 28, 2016 request for evidence letter, the Region sought information specifically related to the "**decision making process**" related to FCA's alleged unlawful actions. (Exhibit A) On January 12, 2017, the Board Agent left a voicemail requesting documents related to this matter – namely, documents **used in making the decisions** at issue. Counsel for FCA responded to this request on January 12, 2017 and advised the Board Agent that she was travelling for business but would follow up on her return to the office on January 17, 2017. As promised, on January 17, 2017, FCA

responded to the request for information to again explain documents were not specifically referenced in making the challenged employment decisions. (Exhibit B)

Notwithstanding FCA's cooperation in this matter, the Region inappropriately issued the Subpoena broadly and inappropriately expanding the scope of the investigation by seeking information for which it had never sought voluntary cooperation. The Region's requests in the instant Subpoena underscore the irrelevance and overbroad scope of the information requested. For these reasons, the Petition to Revoke should be granted.

ARGUMENT

A. The Region's Proposed Modifications Contained in its Opposition are Still Deficient, Lack Specificity, are Overbroad, and are Unduly Burdensome.

In its Opposition, the Region alleges the Subpoena is proper because it is granted broad subpoena power and this power is interpreted expansively; however, in so doing, the Region fails to acknowledge that these powers are specifically limited by § 102.31(b) of the National Labor Relations Board's ("the Board") Rules and Regulations which provides a subpoena *must* be revoked where the evidence sought "does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required."

The Subpoena, even as amended by the Opposition, is drastically overbroad and seeks information wholly unrelated to the instant allegations. The Subpoena paragraphs, particularly 1-4, lack specificity, as described more fully in the Petition to Revoke, and the proposed modifications fail to address these deficiencies. By way of example, the Opposition attempts to limit the broad scope of the Subpoena by revising the requests; however, with respect to Request 2, the Subpoena requested "any and all documents referencing the questions asked of the launch position applicants, and include any documents showing the applicants' response." In its Petition

to Revoke, FCA noted that based on the Subpoena's definition of FCA encompasses every FCA location (in North America alone, 79 facilities plus its corporate headquarters and over 230,000 employees). While the Region now offers to limit the Subpoena to only the facility involved in the Charge (a limitation it should have provided initially), Item 2 still is not limited to any particular launch position or any specific applicants. The Opposition attempts to revise this request by limiting the information to "decisions made during the period April 30, 2016 through August 31, 2016" and, while reducing the previous *five year* timeframe for the requested information, fails to limit the information to the specific launch at issue or otherwise provide specificity of the information sought.

Similarly, the Opposition attempts to limit Request 5 in temporal scope to September 15, 2016 through January 15, 2017 but fails to address FCA's objections that the request, even as limited, fails to state with any specificity the information actually sought and FCA would be required to provide hundreds, if not thousands, of documents which potentially "reflect" Charging Party's various work assignments including payroll records, time records, and assignment sheets, without any determination by the Region as to the need for or relevancy of the information. According to the Charge filed in the instant matter, Charging Party specifically alleged FCA failed to permit Charging Party to serve as a team leader on a single day-- September 15, 2016-- but the Subpoena nonetheless seeks three months of job assignment documents. Similarly, Charging Party alleges that on September 13, 2016, FCA denied her a floater position. Nonetheless, the Region ignored the specificity provided by Charging Party and made sweeping requests for documents which are otherwise unnecessary based on Charging Party's own claims.

The Region ignores the obvious overbreadth and lack of specificity of the requests, even as amended, as well as the attendant burden of collecting these irrelevant documents. For these reasons, FCA's Petition to Revoke should be granted.

B. The Region is Seeking Evidence Wholly Irrelevant to the Charge or Otherwise Not Before the Region.

As set forth above, if not revoked, the expansive nature of the Subpoena would require FCA to produce countless documents with no relation to the allegations at issue in the instant matter. It is well-established that the Board does not have "carte blanche to expand the charge as [it] might please," yet it is attempting to do so in this case. *Allied Waste Servs. of Fall River*, 2014 WL 7429200, at *2 (Dec. 31, 2014) (quoting *NLRB v. Milling Co.*, 360 U.S. 301, 308-09 (1959)). The Board's *Case Handling Manual, Part One, Unfair Labor Practice Proceedings* specifically provides that a "subpoena duces tecum should seek relevant evidence and should be drafted as narrowly and specifically as is practicable." Section 11776. Here, the Region pursues irrelevant information, and has not established in its Opposition that the information is relevant.

For instance, in its Opposition, the Region seeks "cost analysis documents to support [FCA's] decision to remove the Charging Party as a team leader coach in her area." The Region appears to be seeking to examine FCA's unalleged business decision to reduce the number of team leader coaches. This is irrelevant to any charge allegation. The charge allegation is whether FCA discriminately selected Charging Party *after* it made the business decision to reduce the number of team leader coaches. The issue of whether FCA could and did properly reduce the number of team leader coaches is not before the Region – rather, the only issue is whether FCA discriminated against Charging Party for her alleged protected concerted activity (activity that FCA is unaware of and that, to date, the Region has not given further detail as to its alleged occurrence). Moreover, these documents were not sought voluntarily from FCA, so

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Charging Party

CERTIFICATE OF SERVICE

I certify that on March 6, 2017, a copy of the foregoing Reply to the Region's Opposition to Charged Party's Petition to Revoke Subpoena Duces Tecum No. B-1-V78WXZ was *Electronically Filed* on the NLRB's website <http://www.nlr.gov> and a copy was filed via electronic mail on Cheryl Sizemore at cheryl.sizemore@nlrb.gov.

/s/
Sarah M. Rain

EXHIBIT A



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 8
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November 28, 2016

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Re: FCA - US LLC
Case 08-CA-185825

Dear Ms. Rain:

I am writing this letter to advise you that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above-captioned matter. As explained below, I am requesting to take affidavits on or before December 14, 2016 with regard to certain allegations in this case.

Allegations: Charging Party Mee Sanders alleges that the Employer has discriminated against her by failing to select her for a launch position, removed her from a team leader/ team leader coach position, refusing her to float from one job to the next on a daily basis based on her seniority, selecting a part-time employee to be a team leader, contrary to the contract, and by Supervisor Kiser attempting to issue a written discipline to her for allegedly violating the attendance policy on September 26, 2016, and on a date that she allegedly notified management that she would not be working on September 26, 2016. Sanders asserts that the Employer has discriminated against her because she previously filed NLRB charges against the Employer and because the Union has caused or attempted to cause the Employer to discriminate against her. (The charge will be amended to include a Section 8(a)(4) violation)

Board Affidavits: I am requesting to take affidavits from Supervisor Dan Kiser, Manager Chuck Padden, Human Resource Supervisor Connie Ruben, Center Manager Brian Burke, Manager Jason Schultz, Manager Jon Castillo and any other individuals you believe have information relevant to the investigation of the above-captioned matter. Please be advised that the failure to present representatives who would appear to have information relevant to the investigation of this matter, for the purposes of my taking sworn statements from them, constitutes less than complete cooperation in the investigation of the charge. Please contact me by December 7, 2016 to schedule these affidavits.

Documents: Please provide the following documents, along with any and all other evidence, including a position statement, you deem to be relevant to the case, no later than December 14, 2016:

1. The complete personnel folder of Mee Sanders, excluding medical insurance, life insurance, and/or pension plan documents.
2. Any documents, including e-mails, notes, and memorandum which reflect or refer to the decision making process regarding:
 - (a) the termination of Mee Sanders as a team leader/team leader coach
 - (b) the decision not to permit Mee Sanders to be a daily floater, rather than being assigned to one team/job;
 - (c) the decision not to offer/permit Sanders to perform as a team leader on September 15, 2016, rather than permitting a part-time employee to perform those duties
 - (d) the decision not to offer Sanders a JL/JT launch position, similar to other employees including, but not limited to James Fayson, Todd Gibson, Joshua Schacht, and Sandy Sutton (who allegedly declined the offer)
3. The names and title of the Union and Employer representatives who made the decision regarding items listed in 2(a) – 2(d) above.
4. The seniority dates of employees and documents used by the employer to select employees for the launch position, including, but not limited to documents relating to relevant experience of employees listed or not listed in paragraph 2(d).
5. The titles of those individuals that I have requested to take affidavits from as outlined above.
6. Any documents/evidence that supports the reason for Supervisor Dan Kiser to attempt to issue Mee Sanders a written discipline for violating the attendance policy on about September 26, 2016.

Date for Submitting Evidence: To resolve this matter as expeditiously as possible, you must provide your evidence and position in this matter by December 14, 2016. If you are willing to allow me to take affidavits, please contact me by December 7, 2016 to schedule a time to take affidavits. Electronic filing of position statements and documentary evidence through the Agency website is preferred but not required. To file electronically, go to www.nlr.gov, select **E-File Documents**, enter the **NLRB case number**, and follow the detailed instructions. If I have not received all your evidence by the due date or spoken with you and agreed to another date, it will be necessary for me to make my recommendations based upon the information available to me at that time.

Please contact me at your earliest convenience by telephone, (216)303-7388, or e-mail, cheryl.sizemore@nlrb.gov, so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

/s/ Cheryl Sizemore
CHERYL SIZEMORE
Field Attorney

27695376.1

EXHIBIT B

Rain, Sarah M.

From: Rain, Sarah M.
Sent: Tuesday, January 17, 2017 12:40 PM
To: Sizemore, Cheryl (Cheryl.Sizemore@nlrb.gov)
Subject: Case No. 08-CA-185825; FCA and M. Sanders [ODNSS-OGL.020456.000314]

Cheryl,

In response to your voicemail last week asking about certain information, I have confirmed with my client that there are no documents responsive to your requests.

- As indicated in our position statement, the decision to remove Sanders as a team leader coach was made after verbal consultations with the center managers and a determination that Sanders' center no longer required a team leader coach based on the progress made by the team leaders in that area.
- Similarly, there is no documentation related to the decision not to permit Sanders to be a daily floater as she is, in fact, a daily floater and this allegation is wholly without merit.
- There is no documentation related to the decision to not offer Sanders work as a team leader on 9/15/16 as this was a decision made quickly for the purpose of a one day assignment. As indicated in our position statement, Sanders was not offered this opportunity as it was her first day in the Trim, Chassis, and Final department and she did not have the requisite knowledge of the job.
- Finally, there is no documentation related to the launch position selection/non-selection as this was a decision that was made after verbal consultations with the center manager and interviews with employees. As indicated in our position statement, Sanders was not offered the position as the individuals selected were more qualified for the position.

In response to your request for position titles, they are as follows:

- Brian Burke – Center Manager, Wrangler Paint
- Jason Schultz – JL Launch Manager/Center Manager Cherokee
- Jon Castillo – Center Manager, Cherokee Paint
- Connie Rubin – Labor Relations Supervisor

Titles for the other identified individuals were previously provided.

Please do not hesitate to contact me should you have any questions.

Sarah M. Rain | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

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