

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RED APPLE 180 MYRTLE AVENUE  
DEVELOPMENT, LLC

and

LOCAL 32BJ, SEIU

Cases 29-CA-184816  
29-CA-188888

LOCAL 621, UWA

and

LOCAL 32BJ, SEIU

Case 29-CB-184813

ORDER

The Petition to Revoke subpoenas ad testificandum addressed to Ndue Shabani (A-1-V335MR), Francisco Jiminez, (A-1-V331CB), Carlos Taylor (A-1-V309BH) and Elgin Weston (A-1-V31Q4V), is denied. The Petitioner, Red Apple 180 Myrtle Avenue Development, LLC, does not have standing to file a petition to revoke a subpoena that is addressed to a third party unless it asserts that the requested information is protected by a privilege or a right of privacy.<sup>1</sup> The Petitioner has not argued that the information sought from the employees is protected by any privilege. Although the Petitioner argues that there is “no reason to impinge on the privacy rights” of the employees if the Board is already in possession of the information (Petition to Revoke, p. 6), it has not established that it possesses any personal privacy rights to the information sought from the employees.

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<sup>1</sup> “Ordinarily a party has no standing to seek to quash a subpoena issued to someone who is not a party to the action unless the party claims some personal right or privilege with regard to the documents sought.” *In re Grand Jury Subpoena John Doe, No. 05GJ1318*, 584 F.3d 175, 184 fn. 14 (4th Cir. 2009), citing 9A Wright, Miller & Cooper, *Federal Practice and Procedure* § 2459 (3d ed. 1998).

In addition, even assuming that the Petitioner had standing to file the petition, we find that it is lacking in merit. 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. See *Postal Workers Local 64 (USPS)*, 340 NLRB 912 (2003); *Offshore Mariners United*, 338 NLRB 745 (2002).<sup>2</sup> Further, the Petitioner has 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).

Dated, Washington, D.C., April 20, 2017

PHILIP A. MISCIMARRA,	ACTING CHAIRMAN
MARK GASTON PEARCE,	MEMBER
LAUREN McFERRAN,	MEMBER

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<sup>2</sup> The disposition of the Employer's petition to revoke is consistent with existing Board law as reflected in *Postal Workers* and *Offshore Mariners*, which find subpoenas identifying the case name and number to be sufficiently particular.

Acting Chairman Miscimarra agrees that the General Counsel has described with sufficient particularity the evidence sought, but solely because the General Counsel's opposition to the petition to revoke the subpoenas has, at this point, described the nature of the charges (involving allegations of unlawfully solicited union authorization cards and unlawful recognition) and has provided general information regarding the subject matter deemed relevant to the testimony sought from the subpoenaed individuals. In Acting Chairman Miscimarra's view, however, the subpoena itself should describe with reasonable particularity the general topic(s) or issue(s) that would be the subject of subpoenaed testimony or other evidence. See Sec. 11(1) of the Act; Sec. 102.31(b) of the Board's Rules. Acting Chairman Miscimarra believes the requirement of "particularity" requires more than merely giving the case name and number of the proceeding in which the subpoena has been issued. He also notes that the Board has moved in the direction of providing substantially more detail in remedial notices, for example, to "facilitate a better understanding," including hyperlinks and QR codes providing direct electronic access to the Board's decision(s). Cf. *Durham School Services LP*, 360 NLRB No. 85 (2014). Although subpoenas serve a different purpose, Acting Chairman Miscimarra believes they should provide fair notice to recipients regarding the topic(s) or issue(s) deemed relevant to the testimony or other evidence being sought.