

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

**CARIBBEAN RESTAURANTS, LLC  
d/b/a BURGER KING**

**and**

**Case 12-CA-189669**

**MARIA DEL MAR RIVERA-RIVERA**

**and**

**Case 12-CA-189670**

**JOSE OTERO-RIVERA**

**and**

**Case 12-CA-189672**

**KARLA TIRADO**

**ORDER**

The Employer's Motion to Revoke subpoenas duces tecum B-1-V7FOSB 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. 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>1</sup>

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<sup>1</sup> In considering the motion to revoke, we have evaluated the subpoena in light of the Region's modification of par. 4 to limit the scope of the subpoena to discharges at the Employer's facilities in Ciales, Comerio, Corozal, Dorado, Manati, and Vega Alta, Puerto Rico, that occurred after January 1, 2015. Contrary to our dissenting colleague's assumption, the Region's offer to limit the scope of the subpoena does not establish that the subpoena initially was overbroad, and we find that it was not. Rather, the Region's modifications appear merely to promote efficiency and provide further clarity to the parties. Last, we observe that in this case the Employer did not engage with the Region at all before the issuance of the subpoena, and ignored the Region's repeated requests for information. It was only after the subpoena issued, seeking precisely the

Dated, Washington, D.C., June 5, 2017

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

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same information the Region previously had sought, that the Employer raised temporal and geographic scope issues for the first time in its motion to revoke.

Chairman Miscimarra respectfully dissents from the Board majority's denial of the motion to revoke as to par. 4 of the subpoena as to the Employer's restaurants in locations other than Ciales, Comerio, Corozal, Dorado, Manati, and Vega Alta, Puerto Rico. With regard to that paragraph, which sought the personnel records of all employees that the Employer has discharged for violating certain enumerated work rules since January 1, 2014, the motion to revoke argued that the request would require the Employer to review the personnel files of thousands of current and former employees at over 160 locations. In response, counsel for the General Counsel modified the subpoena to cover discharges since January 1, 2015, and limited the geographic scope to Employer locations in six municipalities referenced above. 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 motion or petition to revoke raises appropriate objections to the requests on that basis, Chairman Miscimarra believes it is more appropriate for the Board to *grant* the petition to revoke as to such requests, rather than denying the petition to revoke (as the Board majority does here) based on a change that was communicated only after the petition to revoke is under consideration by the Board. See Sec. 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 and temporal modifications served "merely to promote efficiency and provide further clarity to the parties," he believes these efforts must be undertaken before disputes regarding a subpoena's scope are presented to the Board in a party's petition to revoke. Although his colleagues fault the Employer for failing to engage the Region before the issuance of the subpoena, Chairman Miscimarra believes that whether or what type of informal exchanges may have occurred before this subpoena's issuance is unrelated to the appropriate scope of the subpoena request; and the appropriate scope of subpoena requests should be addressed by the Region in the first instance when crafting the subpoena. Finally, Chairman Miscimarra believes that granting a petition to revoke in the circumstances presented here would be without prejudice to the potential issuance of a new subpoena that is appropriate in scope (subject to applicable time limits and other requirements set forth in the Act and the Board's Rules and Regulations).