

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FARERI ASSOCIATES, LP

and

Cases 01-CA-188158
01-CA-190046

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 32BJ

ORDER

The Employer's Petition to Revoke subpoena duces tecum B-1-VLTRXP 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).¹

¹ In considering the petition to revoke, we have evaluated the subpoena in light of the Region's withdrawal of par. 3 and its modification of pars. 10, 18, and 19 to limit the scope of the subpoena. Specifically, (1) as to par. 10, the Region states that "[t]o the extent that 'employee activity' could be interpreted to include the ordinary discharge of an employee's job duties, Counsel for the Regional Director is willing to define that phrase as 'activities engaged in by employees pertaining to their hiring and/or altering their terms and conditions of employment'"; (2) as to par. 18, the Region is willing to limit the requested time period to November 1, 2016 through the date of the subpoena; and (3) as to par. 19, the Region is willing to limit the scope of documents sought to "the Employer's managerial and supervisory personnel operating at, or overseeing operations at, the Office Park." 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. Instead, we note that 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 information the Region previously had sought concerning the allegations in the charges, that the Employer raised temporal and geographic scope issues and objections to the definition of "employee activity" for the first time. In response, the Region initiated post-subpoena discussions with the Employer in order to achieve voluntary compliance by limiting the scope of the

Dated, Washington, D.C., August 9, 2017

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

subpoena, and extended the time for compliance. The Region's withdrawal of par. 3 and its limitation of pars. 10, 18, and 19 were the result of these discussions, and reflect the Region's efforts to promote efficiency and provide further clarity to the parties.

Chairman Miscimarra respectfully dissents from the Board majority's denial of the petition to revoke as to pars. 3, 10, 18, and 19 of the subpoena. With regard to those paragraphs, which sought, respectively, documents showing contracts between AffinEco/United Services of America and the Employer; certain communications describing employee and/or union activity; the Employer's managerial and organizational structure; and job descriptions for the Employer's managerial and supervisory personnel, the petition to revoke argued, among other things, that the requests were overbroad and irrelevant in scope and/or time, and that par. 10 failed to define the term "employee activity." In response, counsel for the General Counsel modified the subpoena to withdraw par. 3, to limit the temporal and geographic scope of the requests, and to define the term "employee activity," as described 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 and limitation of the definition of "employee activity" 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).