

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

BRIGHTSIDE ACADEMY

and

Case 29-CA-194062

DISTRICT COUNCIL 1707 AFSCME

ORDER¹

The Employer's petition to revoke subpoena duces tecum B-1-WTR111 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).²

¹ The National Labor Relations Board has delegated its authority in this matter to a three-member panel.

² In considering the petition to revoke, we have evaluated the subpoena in light of the Region's agreement to limit the scope of subpoena pars. 2 and 3 to unit employees. 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, it appears that the Region initiated a post-subpoena discussion with the Employer's counsel in order to achieve voluntary compliance by limiting the scope of the subpoena, and this discussion reflects 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. 2 and 3 of the subpoena to the extent that those paragraphs seek documents showing the scheduled start times and actual reporting times of *individuals employed outside of the bargaining unit*. In its petition to revoke, the Employer argued that pars. 2 and 3 seek irrelevant evidence to the extent they require production of documents pertaining to supervisors and non-teaching employees. In response, counsel for the General Counsel orally stated that the Region in subpoena pars. 2 and 3 only intended to seek information about unit employees. 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

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

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 limitation of the definition of “employees” served “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. Chairman Miscimarra believes that 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).