

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01

HANDY TECHNOLOGIES, INC.

and

MAISHA EMMANUEL, AN INDIVIDUAL

Case 01-CA-158125

HANDY TECHNOLOGIES, INC.

and

MYETIA VAUGHAN, AN INDIVIDUAL

Case 01-CA-158144

**COUNSELS FOR THE GENERAL COUNSEL'S REQUEST FOR SPECIAL
PERMISSION TO REPLY AND REPLY TO HANDY TECHNOLOGIES INC.'S
OPPOSITION TO THE GENERAL COUNSEL'S REQUEST FOR SPECIAL APPEAL
FROM THE RULING OF AN ADMINISTRATIVE LAW JUDGE CONCERNING THE
ADMISSIBILITY OF STATE UNEMPLOYMENT BENEFITS ELIGIBILITY DECISIONS**

Counsels for the General Counsel¹ hereby request special permission to reply to Respondent Handy Technologies, Inc.'s Opposition to the General Counsel's Request for Special Appeal from the Ruling of an Administrative Law Judge Concerning the Admissibility of State Unemployment Benefits Eligibility Decisions (the Opposition to Special Appeal). This submission constitutes both Counsels for the General Counsel's request for special permission to reply and the reply itself, including argument in support of the reply (the Request for Special Permission to Reply).

1. On September 7, 2017, Counsels for the General Counsel caused Subpoena Duces Tecum B-1-Y41JQR (the Subpoena) to be served on Respondent,

¹ With the expiration of General Counsel Richard F. Griffin, Jr.'s term, Deputy General Counsel Jennifer Abruzzo has been named Acting General Counsel, and this motion is maintained on her behalf. For the sake of simplicity, this document will continue to refer to "the General Counsel."

directed to its Keeper of the Records. Paragraph 6 of the Subpoena sought production of unemployment benefits eligibility decisions involving Handy cleaners issued since February 17, 2015 in any jurisdiction in which Handy offers household cleaning services.

2. On September 22, 2017, Respondent filed a Petition to Revoke Subpoena Duces Tecum No. B-1-Y41JQR (the Petition to Revoke) asserting, in relevant part, that unemployment benefits eligibility decisions did not relate to any matter in question in these proceedings. *See Petition to Revoke at 3-4.*

3. On October 2, 2017, Counsels for the General Counsel filed an Opposition to Respondent Handy Technologies, Inc.'s Petition to Revoke Subpoena (the Opposition to Petition to Revoke), arguing, in relevant part, that "Respondent's apparent assertion that the Board has only admitted [state unemployment compensation eligibility] decisions with respect to factual matters is mistaken, as is its claim that such decisions are irrelevant to determining whether Respondent's cleaners are employees under the Act." *See Opposition to Petition to Revoke at 6.* (emphasis supplied)

4. On October 5, 2017, Deputy Chief Administrative Law Judge Arthur J. Amchan (Judge Amchan) issued an Order granting Respondent's Petition to Revoke with respect to Subpoena Paragraph 6. In this regard, Judge Amchan ruled that although admissible, such decisions would have no probative value to this case in determining whether Respondent's cleaners are employees or independent contractors.²

² Thus, without having considered the substance of any state unemployment compensation eligibility decisions the Subpoena encompasses, Judge Amchan arbitrarily ruled that such decisions are not relevant. This is clear error and is the basis for Counsels for the General Counsel's Motion for Reconsideration and their Special Appeal.

5. On October 16, 2017, Counsels for the General Counsel filed a Motion for Reconsideration of Order Granting in Part and Denying in Part Respondent's Petition to Revoke Subpoena (the Motion for Reconsideration) with respect to Judge Amchan's ruling on Subpoena Paragraph 6. In that filing, Counsels for the General Counsel wrote, "In support of their Motion for Reconsideration, and in addition to the reasons set forth in Counsels for the General Counsel's Opposition to Respondent Handy Technologies, Inc.'s Petition to Revoke Subpoena Duces Tecum,³ Counsels for the General Counsel respectfully submit that [state unemployment compensation eligibility] decisions are admissible on the following grounds[.]" See *Motion for Reconsideration* at 1. (emphasis supplied)

6. On October 17, 2017, Respondent filed an Opposition to Motion for Reconsideration (the Opposition to Motion for Reconsideration), erroneously stating that the Motion for Reconsideration failed to address Judge Amchan's stated reasons for granting Respondent's Petition to Revoke with respect to Subpoena Paragraph 6, i.e., that, although such decisions are admissible, they would have no probative value. See *Opposition to Motion for Reconsideration* at 1-2.

7. On October 18, 2017, Judge Amchan issued an Order denying the Motion for Reconsideration for the reasons stated in his October 5, 2017 Order.

8. On October 24, 2017, Counsels for the General Counsel submitted to the Board a Request for Special Appeal from the Ruling of an Administrative Law Judge Concerning the Admissibility of State Unemployment Benefits Eligibility Decisions (the Special Appeal).

³ Those reasons are that such decisions are both admissible and relevant, *that is to say, they are both admissible and probative.* See *Opposition to Petition to Revoke* at 6.

9. On October 31, 2017, Respondent filed its Opposition to the Special Appeal (the Opposition to Special Appeal), arguing, *inter alia*, that the Special Appeal “should be denied at the outset because the [Special] Appeal improperly raises arguments that were not previously presented to the ALJ” and that “[i]t is well settled that a party cannot raise arguments to the Board that have not previously been presented to the Administrative Law Judge.” See *Opposition to Special Appeal* at 1, 2. In this regard, Respondent asserts that, “In moving for reconsideration of the Judge’s decision, the General Counsel did not . . . contend that the unemployment benefits decisions were somehow ‘relevant’ or ‘probative.’ Instead, the General Counsel’s motion to the ALJ contended only that the decisions sought by the subpoena were ‘admissible,’ a fact which the ALJ had already acknowledged. . . but had found to be beside the point. Neither the words ‘relevant’ nor ‘probative’ appear anywhere in the General Counsel’s argument to the Judge seeking reconsideration of his order.” See *Opposition to Special Appeal* at 2.

10. As the quoted and highlighted text from their Motion for Reconsideration makes clear (see Paragraph 5, *supra*), in addition to the arguments set forth in that filing, Counsels for the General Counsel specifically incorporated in their entirety the arguments set forth in their Opposition to Petition to Revoke, *i.e., that state unemployment compensation eligibility decisions are both admissible and relevant.* Accordingly, Respondent’s assertion that Counsels for the General Counsel somehow waived their right to argue in their Special Appeal that state unemployment compensation eligibility decisions are relevant is entirely groundless and must be rejected.

WHEREFORE, Counsels for the General Counsel respectfully request that the Board grant this Request for Special Permission to Reply and grant their Special Appeal.

Signed at Boston, Massachusetts this 3rd day of November, 2017.

Respectfully submitted,

/s/ Daniel F. Fein

/s/ Laura H. Pawle

Daniel F. Fein

Laura H. Pawle

Counsels for the General Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2017, I served a copy of Counsels For The General Counsel's Request For Special Permission To Reply And Reply To Handy Technologies Inc.'S Opposition To The General Counsel's Request For Special Appeal From The Ruling Of An Administrative Law Judge Concerning The Admissibility Of State Unemployment Benefits Eligibility Decisions , by electronic mail on the following:

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