

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**TRADE OFF, LLC**

**and**

**Cases 02-CA-199415**

**02-CA-205658**

**02-CA-212872**

**LOCAL 79, CONSTRUCTION  
AND BUILDING LABORERS**

**TRADE OFF, LLC AND HUMPRHEY  
RICH CONSTRUCTION GROUP, INC.,  
AS JOINT EMPLOYERS**

**and**

**02-CA-203161**

**LOCAL 79, CONSTRUCTION  
AND BUILDING LABORERS**

**TRADE OFF, LLC, AND TRADE  
OFF PLUS, LLC, AS SINGLE AND/OR  
JOINT EMPLOYERS**

**and**

**02-CA-207414**

**LOCAL 79, CONSTRUCTION  
AND BUILDING LABORERS**

**Order on the Respondents' Petitions to Revoke Subpoenas**

Respondents Trade Off, LLC (Trade Off) and Trade Off Plus, LLC (Trade Off Plus), collectively the Respondents, have petitioned to revoke General Counsel subpoenas duces tecum B-1-12LTS7X and B-1-12LTTOT, respectfully.<sup>1</sup> The two subpoenas contain several identical requests for documents.

The complaint alleges that Respondent Trade Off has maintained an unlawful lawsuit against Darrell Jamison and Ricardo Pimental for defamation and liable, discharged Larry Kerr and Willie Zimmerman because of their protected activity, refused to hire or consider for hire Riccie Haneiph because of his protected activity, and engaged in surveillance of employees

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<sup>1</sup> Respondent Humphrey Rich Construction Group, Inc. (Humphrey Rich) filed a petition to revoke a subpoena as well. However, that petition is not addressed herein because the case against Respondent Humphrey Rich is pending settlement.

protected activity. The complaint further alleges that the Respondents discharged David Robinson and Darrell Thomas because of their protected activity, interrogated employees about their union activity and sympathies, prohibited employees from engaging in protected activity, threatened employees with discipline and/or discharge for engaging in protected leafleting, and threatened employees with unspecified reprisals if they maintained contact with Local 79, Construction and Building Laborers (Union).<sup>2</sup> On a conference call, the General Counsel represented that the alleged discriminatees are laborers.

The complaint names the following individuals as supervisors and/or agents of the identified Respondent:

Ronald Lattanzio	President, Respondent Trade Off
Rich Cotrite	Supervisor, Respondent Trade Off
Jose Bonilla	Supervisor Respondent Trade Off Plus
Jason Abadie	VP of Operations, Respondents Trade Off and/or Trade Off Plus
Delbert Hall	Foreman, Respondent Trade Off Plus and/or Trade Off

Preliminarily, I note that the burden of establishing that an administrative subpoena is unduly burdensome or seeks confidential information is on the subpoenaed party and conclusory assertions are not sufficient to meet that burden. *Hospital of Barstow, Inc.*, 2015 WL 1564939 (2015) citing *Nova Products, Inc. v. Kisma Video, Inc.*, 220 F.R.D. 238 (S.D.N.Y. 2004); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (5<sup>th</sup> Cir. 1996). The subpoenaed party must establish with specificity that production of the subpoenaed documents would cause serious disruption. *Id.*; *EEOC v. Maryland Cup Corporation*, 85 F.2d 471, 477 (1986). The fact that compliance with a subpoena may require the production of bulky, voluminous or numerous documents is insufficient to establish that it is burdensome and does not serve as an excuse for noncompliance. *McGarry v. S.E.C.*, 147 F. 2d 389 (10<sup>th</sup> Cir. 1945); *NLRB v. United Aircraft Corp.*, 200 F. Supp. 48, 51 (D. Conn. 1961), *aff'd mem.*, 300 F. 2d 442, 49 LRRM 3042 (2<sup>nd</sup> Cir. 1962).

**Paragraphs 4 and 6 of the Trade Off Subpoena and Paragraphs 3 and 4 of the Trade Off Plus Subpoena**

Paragraphs 4 and 6 of the Trade Off subpoena and paragraphs 3 and 4 of the Trade Off Plus subpoena seek documents that will show the names, phone numbers, addresses, dates of hire and termination, rates of pay, and job classification of individuals employed by the Respondents at 520 West 30th Street, New York, NY (September 1 to September 30, 2017) and 264 West Street, New York, NY (September 1 to October 31, 2017). The General Counsel contends that the information is relevant to the alleged supervisory status of certain individuals and could potentially lead to the identification of witnesses who would attest to the alleged violations. In particular, the General Counsel asserts that the requested information will be relevant to the supervisory status of Hall, who apparently worked at 264 West Street.

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<sup>2</sup> The Respondents Trade Off and Trade Off Plus have offered, for purposes of this case only, to stipulate to joint-employer status. Although the stipulation is pending approval by the General Counsel, I shall assume for purposes of this order that the Respondents' status single or joint-employer will not be litigated.

The Board maintains a broad standard that favors the production of subpoenaed documents which provide background information or information that is reasonably calculated to lead to other relevant evidence. *McDonalds USA, LLC*, 363 NLRB No. 144 (2016). Nevertheless, even under this standard, the request for employee contact information is questionable. The Region has already conducted an investigation with subpoena power, and the General Counsel has not identified any specific reason to believe that additional individuals were witness to relevant events. While such a course of action may be appropriate during the investigation, I do not believe the broad production of contact information for all employees at the start of trial is a course reasonably calculated to lead to the production of relevant evidence. Accordingly, I will not order the production of such documents at this time.

The other information (requested dates of hire and termination, rates of pay, and job classification) for employees at 264 West Street is potentially relevant to secondary indicia of Hall's supervisory status and I will order that information produced. However, it is not clear to me that such information is relevant for the employees at other locations, and I will not, at this time, order the production of such information for employees at 520 West 30th Street.

**Paragraphs 7 and 8 of the Trade Off Subpoena**

Paragraphs 7 and 8 of the Trade Off subpoena seek documents that will show the names, phone numbers, addresses, dates of hire and termination, rates of pay, and job classification of individuals employed at 56 Fulton Street, New York, NY and 180 Water Street, New York, NY (September 1 to October 31, 2017). These locations are not referenced in the complaint, but the General Counsel represents that they were the worksites of alleged discriminatees Jamison and Pimental. For reasons discussed above, I will not order the production of responsive documents at this time.

**Paragraphs 12(a) and 14 of the Trade Off Subpoena  
and Paragraph 8 and 9 of the Trade Off Plus Subpoena**

Paragraph 12(a) of the Trade Off subpoena and paragraph 8 of the Trade Off Plus subpoena seek job descriptions, job postings, appraisals, and other documents that show the job duties or authorities of the position held by Hall at 264 West Street. I do not find the request to be vague or overly broad, or otherwise objectionable, as the Respondents contend. The requested information is relevant to the supervisory status of Hall and I will order it produced.

Paragraph 14 of the Trade Off subpoena and paragraph 9 of the Trade Off Plus subpoena seek documents that will show Hall's involvement or participation, including recommendations, in various personnel decisions. The Respondents contend that the request "entails a legal interpretation" of Section 2(11) supervisory indicia. The Respondents further state that "it is the company's position that Mr. Hall is not a section 2(11) supervisor, therefore, no responsive documents exist." I do not agree that the Respondents' response to this request requires a legal interpretation. The subpoena uses plain English to describe documents that would establish relevant facts. Further, the Respondent is obligated to conduct a good-faith search for and review of individual documents to determine whether they are responsive to the request.

**Paragraph 15(a), (c)-(h) of the Trade Off Subpoena  
and Paragraph 10 Trade Off Plus Subpoena**

Paragraph 15(a), (c)-(h) of the Trade Off subpoena and paragraph 10 of the Trade Off Plus subpoena seek, collectively, the personnel and employment files of Hall, Jamison, Pimental, Haneiph, Kerr, Zimmerman, Thomas and Robinson. The documents are relevant to the supervisory status of Hall and the alleged unfair labor practices involving the other named individuals. I reject the Respondents' objections, including their contention that the request is over broad to the extent it seeks the entire personnel file. The requested personnel files are limited in number and can be expected to contain information related to the named individuals. The Respondents have not established that production would be voluminous or burdensome. Further, the General Counsel need not rely on the Respondents to parse the files and determine which documents will be most useful as evidence in the instant case. Accordingly, I will order the production of the requested personnel files.

**Paragraph 16 of the Trade Off Subpoena  
and Paragraph 11 of the Trade Off Plus Subpoena**

Paragraph 16 of the Trade Off subpoena and paragraph 11 of the Trade Off Plus subpoena seek, for the period February 1, 2015 to January 31, 2018, documents showing discipline, including discharges, issued by Respondent to employees for disobedience or insubordination. The Respondents object to the production of disciplinary records for 500+ employees (given turnover) and demand a more specific request.

I will limit production of this request to the period February 1, 2016 to January 31, 2018 and, for the time being, to employees in the position of laborer. The Respondents have not established that the request would, despite these limitations, be overly broad and/or burdensome. Although the Respondents have represented that three years of documents would involve a search of the disciplinary records of 500+ employees, the Respondents did not suggest an alternative time period or indicate to what extent an alternative time period would reduce the number of employees involved. Further, the Respondents did not provide an estimate of the number of documents to be searched, where they are located, in what format (e.g., electronic or hardcopy), how the search would/could be conducted (e.g., word search), and how much time it would take to do so.<sup>3</sup> Accordingly, I will order the production of responsive documents, as modified.

**Paragraph 17 and 18 of the Trade Off Subpoena**

Paragraphs 17 and 18 of the Trade Off subpoena seek documents for the worksites at 56 Fulton Street, New York, NY and 180 Water Street, New York, NY, during the period November 1, 2016 and February 28, 2017, as will show the total number of safety harnesses provided by Respondent Trade Off to employees, the use of safety harnesses by Respondent

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<sup>3</sup> If it would be easier for the Respondents to simply produce all disciplinary records for the applicable period (as opposed to parsing the records for those involving disobedience or insubordination), it may discuss the same with the General Counsel.

Trade Off's employees, safety training provided by Respondent Trade Off to employees, complaints made by Respondent Trade Off's employees about safety issues (including the lack of harnesses), requests made by employees about safety issues (including the use of harnesses), and Respondent Trade Off's responses to those requests. The General Counsel contends that the information will be relevant to show that Respondent Trade Off's defamation lawsuit against Jamison and Pimental for their safety complaints is baseless. Based on the General Counsel's representation regarding the substance of the defamation claim, which has not been contested by Respondent Trade Off, I find the request to be relevant and will order the production of responsive documents.

**Paragraph 19 of the Trade Off Subpoena  
and Paragraph 12 of the Trade Off Plus Subpoena**

Paragraph 19 of the Trade Off subpoena and Paragraph 12 of the Trade Off Plus subpoena seek work rules or conditions of employment, including the date and nature of any changes thereto, applicable to non-supervisory employees. The requests are relevant to the Section 8(a)(3) allegations, but I will, for now, limit the request to work rules or conditions of employment applicable to laborers.

**Paragraph 20 of the Trade Off Subpoena  
and Paragraph 13 of the Trade Off Plus Subpoena**

Paragraph 20 of the Trade Off subpoena and paragraph 13 of the Trade Off Plus subpoena seek documents that refer to the Union or unions and were written, distributed, sent or received by four named individuals. The requested documents are potentially relevant to the Section 8(a)(3) allegations and the request as limited to specific individuals is not overly broad. Accordingly, I will order the production of the requested documents.

**Paragraph 21 of the Trade Off Subpoena  
and Paragraph 13 of the Trade Off Plus Subpoena**

Paragraph 21 of the Trade Off subpoena and paragraph 14 of the Trade Off Plus Subpoena seek documents that refer to any discipline, actual or possible, of Thomas or Robinson, and were written, distributed, sent, or received by certain named individuals. The documents are potentially relevant to the alleged unlawful discharges of Robinson and Thomas. Further, the request as limited to certain individuals who prepared, distributed, sent or received the documents is not overly broad. I do not agree with the Respondents' contention that the word "possible" as it applies to potential discipline or misconduct is overly vague or ambiguous. Accordingly, I will order the production of the requested documents.

Based on the foregoing, it is hereby ORDERED that the Respondents' petitions to revoke subpoenas B-1-12LTS7X and B-1-12LTTOT are denied, except as specifically provided above.

Dated this 27th day of September, 2018  
at New York, New York.

/s/ Benjamin W. Green  
Benjamin W. Green  
Administrative Law Judge