

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

GRI TOWERS TEXAS, INC.	§	Cases: 16-CA-202872
	§	16-CA-202909
and	§	16-CA-204620
	§	16-CA-206518
THE PLUMBERS AND PIPEFITTERS	§	16-CA-207789
LOCAL UNION 404 OF THE UNITED	§	16-CA-215682
ASSOCIATION OF JOURNEYMEN &	§	16-CA-217202
APPRENTICES OF THE PLUMBING	§	16-CA-222196
& PIPE FITTING INDUSTRY OR	§	16-CA-226277
THE UNITED STATES AND	§	16-CA-226515
CANADA, AFL-CIO	§	16-CA-229267
	§	16-CA-229689
and	§	16-CA-230780
	§	16-CA-233983
JOHN MOORE, AN INDIVIDUAL	§	16-CA-232576

**RESPONDENT’S RESPONSE TO UNION’S PETITION TO REVOKE IN PART
SUBPOENA DUCES TECUM B-1-14E1AIN**

COMES NOW Respondent GRI Towers Texas, Inc. (“GRI”) and files this Response to Union’s Petition to Revoke in Part Subpoena Duces Tecum B-1-14E1AIN and states as follows:

Background

1. On March 12, 2019, Respondent issued Subpoena Duces Tecum 1-14E1AIN (“Subpoena Duces Tecum”) upon Charging Party Plumbers and Pipefitters Local Union 404 (“Union”). On March 19, 2019, the Union filed a petition to partially revoke the Subpoena Duces Tecum, asserting objections to Request No. 4 of the Subpoena Duces Tecum.

2. Request No. 4 seeks “all documents evidencing communications between the Union and any third party (not including GRI employees or the NLRB) concerning foreign workers at GRI’s Amarillo facility, including, but not limited to, communications regarding the type of

work being performed by Turkish or Spanish workers at GRI's Amarillo facility and/or communications regarding such workers' visas or visa status."

Argument

3. The Union objects to Request No. 4 because it: (1) seeks information that does not relate to any claim or defense; (2) is overly broad; (3) is unduly burdensome; (4) seeks the production of privileged or protected information; and (5) seeks to "abuse" the Board's subpoena process. *See* Union's Petition to Partially Revoke. As explained below, none of these objections provide a valid basis on which to grant the Union's Petition to Partially Revoke.

Privilege

4. Respondent's Subpoena Duces Tecum explicitly states in the "Instructions" section that it does not seek any documents covered by the attorney-client privilege and/or the attorney work-product doctrine. Further, the Subpoena Duces Tecum provides that it, "does not seek documents that require Charging Party to produce documents that explicitly identify Union members or supporters and/or whether they have engaged in protected concerted activity." Counsel for Respondent conferred with counsel for the Union and confirmed these limitations. The Union also acknowledges these limitations in its own Petition to Revoke. *See* footnote 1 in the Union's Petition. As such, by its own terms, the Subpoena Duces Tecum (specifically including Request No. 4) does not seek the production of privileged or protected information, and the Union's Petition to Partially Revoke should be denied on that basis.

5. In addition, the request at issue purposefully seeks communications with "third parties" because such communications have necessarily lost any privilege that could be asserted over them. The Union cannot reasonably claim that information sent to third parties was intended to be privileged or confidential.

Relevance

6. The information requested is relevant to the claims and defenses at issue in this case. The Board's position is that subpoenaed information should be produced if it relates to *any matter in question*, or if it can provide *background information* or lead to other evidence potentially relevant to an allegation in the complaint. *See* NLRB Rules and Regulations, 29 C.F.R. § 102.31(b) (emphasis added); *McDonald's USA, LLC*, 363 NLRB no. 144, slip op. at 15 (2016). Arguably, this standard is even broader than the relevance standard set forth in the Federal Rules of Evidence. *See* Fed. R. Evid. 401 (evidence is relevant if has any tendency to make a fact more or less probable than it would be without the evidence).

7. The Complaint in this case contains several allegations related to the alleged performance of bargaining unit work by GRI's foreign workers. First, Paragraph 12(A) of General Counsel's Third Order Consolidating Cases, Consolidated Complaint and Notice of Hearing ("Complaint") alleges that, from about April 19, 2017 until about late July 2017, Respondent assigned bargaining unit work to non-bargaining unit, Turkish foreign national employees without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct. At the heart of this allegation is the issue of whether the foreign national workers were, in fact, performing bargaining unit work. (GRI denies that the Turkish workers ever performed bargaining unit work). Therefore, any information relating to whether the Turkish workers were performing bargaining unit work is relevant to the allegations in Paragraph 12(A) of the Complaint.

8. Second, Paragraph 13(A) alleges that the Union requested information from Respondent relating to GRI's foreign workers, the type of work they are performing, and their visas. GRI's obligation to provide the requested information will depend in part on whether its

foreign workers were, in fact, performing bargaining unit work. Therefore, any information relating to whether GRI's foreign workers are performing bargaining unit work is relevant to the allegations in Paragraph 13(A) of the Complaint.

9. Third, Paragraph 14 alleges that GRI unlawfully withdrew recognition of the Union. As the NLRB and the Union are aware, in withdrawing recognition, GRI relied upon a decertification petition that was signed by a majority of American bargaining unit workers and that was also signed by 18 Spanish workers. GRI argues that the Spanish workers constitute part of the bargaining unit, and their signatures on the decertification must therefore be counted. The type of work being performed by the Spanish workers is directly relevant to the issue of whether the Spanish workers were part of the bargaining unit and the overall issues of decertification and withdrawal of recognition of the Union.

10. The information requested in response to Request No. 4 has direct bearing on these issues (i.e. the "type of work being performed") and, therefore, is relevant to the claims and defenses in this case. Likewise, communications regarding the workers' visas or visa status are relevant to the type of work the workers were performing. Respondent notes that a similar argument regarding the relevancy of information about the Spanish workers was refused by Judge Steckler in her March 8, 2019 Order. There, Judge Steckler ordered Respondent to produce documents regarding both the Spanish and Turkish foreign national employees. If information regarding the Spanish workers is relevant in the context of a subpoena issued to GRI, it is also relevant in the context of the Subpoena Duces Tecum issued to the Union. The Union's relevancy objection should be overruled.

Overly Broad

11. Request No. 4 is not overly broad. Subpoenas have been held to be overbroad where they do not describe with reasonable particularity what is being sought. Examples of overly broad requests include those which request “all documents” that “relate to” or “pertain to” a general topic. *See, e.g. Perez v. Tequila LLC*, 2014 WL 5341766, at *1 (N.D. Okla. Oct. 20, 2014). The request at issue does not fall within this category of overly broad requests. Instead, Request No. 4 is narrowly tailored, seeking “communications between the Union and any third party (not including GRI employees or the NLRB) concerning foreign workers at GRI’s Amarillo facility, including...communications regarding the type of work being performed by Turkish or Spanish workers at GRI’s Amarillo facility and/or communications regarding such workers’ visas or visa status.

12. This request seeks a specific type of document (communications) between specific people (the Union and a third party), regarding specific people (foreign workers at the Amarillo facility) and specific topics (type of work being performed or visas and visa status). It is not a fishing expedition, but rather an attempt to gain access to a specific and narrow number of communications.

13. Further, to the extent that the Union argues the phrase “any third party” is too broad, Respondent notes that, during its meet and confer call with Union’s counsel regarding the scope of the subpoena, Respondent offered to send a more specific list of third parties (or categories of third parties) to narrow the request. Attorneys for the Union declined GRI’s offer, and thus declined the opportunity to narrow the request further. The Union’s objection regarding overbreadth should be overruled.

Unduly Burdensome

14. Finally, the Union has failed to establish that production of the information requested would be unduly burdensome. To establish that a subpoena is “unduly burdensome,” the party opposing the production must show that production of the subpoenaed information would seriously disrupt its normal business operations. *NLRB v. Carolina Food Processors*, 81 F.3d 507, 513-514 (4th Cir. 1996). Bare or general assertions that production would be seriously disruptive are insufficient. *See NLRB v. AJD, Inc., a McDonald’s Franchisee*, 2015 WL 7018351 (S.D.N.Y. Nov. 12, 2015).

15. Other than making the conclusory assertion that the requested information is “unduly burdensome,” the Union has put forth no evidence to establish that production of the requested information would disrupt its business operations. As such, the Union’s objection should be overruled.

Abuse of Subpoena Process

16. The Union argues that GRI is “blatantly abusing” the Board’s subpoena process through its Request No. 4. As stated above, through the allegations in its charges, the Union has made relevant the issue of whether GRI’s foreign workers are performing bargaining unit work and/or whether GRI’s foreign workers are properly part of the bargaining unit. Respondent has never been provided with any evidence or details regarding why the Union believes Respondent’s Turkish workers are performing bargaining unit work, nor has it been provided with any explanation why the Union believes Respondent’s Spanish workers are not properly part of the bargaining unit.

17. As background for the rationale behind GRI’s request, GRI is aware of two letters sent from the Union to third parties in December 2017. One letter was sent from the Union to the

Amarillo Economic Development Corporation (“AEDC”) and to the Amarillo Mayor, Ginger Nelson. The other letter was sent to GRI’s sole client, General Electric (“GE”). In those two letters, which were forwarded to GRI from the AEDC and GE, respectively, the Union makes allegations and includes supporting arguments and evidence regarding the type of work being performed by GRI’s foreign workers. The information in these letters is relevant to the allegations in the Complaint and could properly be used as evidence in the upcoming hearing. In addition to these two letters, multiple stories have appeared on local news stations regarding the Union’s allegations against GRI, including the allegations that GRI is using foreign workers to perform bargaining unit work. GRI understands that the Union has forwarded such information to the local news stations.

18. GRI has a reasonable basis to believe that the Union has sent additional correspondence to other third parties that will contain information and evidence relevant to the Union’s allegations, and the Union has no lawful basis to withhold such relevant and responsive information. GRI is entitled to see the evidence that will be used against it at the hearing unless there is some legal reason for withholding the information, and no such reason exists here. GRI is not “abusing” the subpoena process but is rather using the subpoena to obtain highly relevant evidence that it is lawfully entitled to review in advance of the upcoming hearing (as opposed to being ambushed with such evidence during the hearing).

Conclusion and Request for Relief

For the above reasons, GRI respectfully requests that the Administrative Law Judge deny the Union’s Petition to Revoke in Part Subpoena Duces Tecum B-1-14E1AIN and order the Union to produce all documents responsive to Request No. 4.

Dated: March 25, 2019

Respectfully submitted,

UNDERWOOD LAW FIRM, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March 2019, I served the foregoing document on the following by email and U.S. mail:

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