

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

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

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

Charging Party, Plumbers and Pipefitters Local Union 404 (“Charging Party” or “Union”) respectfully submits this reply to Respondent GRI Towers Texas, Inc.’s (“Respondent” or “GRI”) Response to Union’s Petition to Revoke In Part Subpoena Duces Tecum B-1-14E1AIN (“Response”). As discussed below, GRI provides no basis for denying the Union’s Petition to Revoke.

I. BACKGROUND

On March 12, 2019, Respondent issued subpoena *duces tecum* B-1-14E1AIN to the Union. On March 19, 2019, the Union filed a Petition to Revoke in Part GRI’s subpoena *duces*

tecum. Specifically, the Union's Petition to Revoke seeks to revoke Request No. 4 of Respondent's subpoena. Request No. 4 states:

Please produce 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.

On March 25, 2019, GRI filed its Response to the Union's petition to revoke.

II. ARGUMENT

A subpoena must be revoked if the evidence sought in the subpoena does not relate to any matter under investigation or in question in the proceedings, does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is invalid. NLRB Rules and Regulations, 29 C.F.R. § 102.31(b). Request No. 4 seeks communications between the Union and third parties (not including GRI employees or the NLRB) concerning foreign workers at GRI's Amarillo facility. This overly broad request seeks information that is not relevant to any party's claim or defense in this case, and should be revoked on that basis.

1. Relevance

The documents sought by GRI in Request No. 4 are irrelevant to the claims and defenses in this case. GRI's Response states that the Third Consolidated Complaint "contains several allegations related to the alleged performance of bargaining unit work by GRI's foreign workers." (Response ¶ 7). In fact, with regard to foreign workers, the Third Consolidated Complaint alleges that GRI: 1) failed to notify and bargain with the Union before assigning bargaining unit work to Turkish workers, and 2) failed to provide information requested by the

Union concerning GRI's Turkish workers. Put another way, the allegations are limited to GRI's refusal to bargain with the Union and provide information to the Union. The Union's communications with unrelated¹ third parties about these matters, if any, have absolutely no bearing on these issues.

More specifically, Paragraph 12(A) of the Third Consolidated Complaint alleges that GRI violated Section 8(a)(5) of the Act when it assigned bargaining unit work to non-bargaining unit Turkish employees without prior notice and without bargaining with the Union. The allegations in the Complaint are therefore limited to whether GRI provided notice to the Union and an opportunity to bargain over the assignment of work to Turkish workers. Thus, any communications between the Union and third parties about foreign workers at the Amarillo facility are irrelevant to the issue of whether GRI provided the Union with notice and the opportunity to bargain over these work assignments.

Paragraph 13(A) alleges that the Union requested information concerning GRI's Turkish workers, and that GRI refused to provide this information. Again, information bearing on this allegation (whether GRI refused to turn over documents requested by the Union) is limited to communications between the Union and the Respondent. The Union's communications with other third parties, if any, about this matter, are not relevant to the allegations or GRI's defense to these allegations.

¹ GRI requested that the Union produce documents concerning communications or negotiations between the Union and GRI concerning Turkish workers, and documents concerning communications between the Union and GRI concerning the Union's information requests. (GRI Request For Production Nos. 3, 12.) The Union has not objected to these requests, and will produce non-privileged documents in its possession that are responsive to these requests.

2. Overbreadth

Request No. 4 is overly broad. Notably, it seeks information regarding the Union's communications with third parties concerning *all* foreign workers, specifically Spanish workers. As explained above, the allegations are limited to whether GRI bargained in good faith about the assignment of work to Turkish workers, and whether GRI provided certain information requested by the Union concerning Turkish workers. GRI's request as it relates to foreign workers other than Turkish workers (specifically Spanish workers) is therefore overly broad, because the Complaint contains no allegations related to Spanish or other foreign workers, and GRI did not raise any issue concerning Spanish or other foreign workers as a defense in its Answer.

Request No. 4 is also overly broad because it seeks not only information concerning the type of work performed by foreign workers and their visa status, but *all* communications between the Union and third parties concerning those workers. Such a request is too far afield of the specific allegations in the Complaint, which concern whether GRI bargained with the Union and provided the Union with requested information on Turkish workers.

3. Abuse of Subpoena Process

Request No. 4 seeks to collect all communications between the Union and any third party about GRI's use of foreign workers. This broad request would have the Union disclose any and all communications with any entity, including the media, GRI's customers, elected officials, and state or federal agencies, including law enforcement agencies. Such communications are too far removed from the issues raised in the Complaint. Notably, GRI does not cite any case law to support its position that these communications are relevant to the unfair labor practice allegations against GRI. On the other hand, the Board and Administrative Law Judges have found these types of communications to be irrelevant in other unfair labor practice proceedings. *See, e.g.,*

Hispanics United of Buffalo, Inc., 359 NLRB 368 n. 2 (2012) (affirming Administrative Law Judge's revocation of subpoena seeking communications between discriminates and third parties, including complaints and inquiries to state and federal agencies, because employer failed to show relevancy to any issue in dispute); *Station Casinos, LLC*, No. 28-CA-22918, JD-59-11, 2011 WL 4433097 (Sept. 22, 2011), *adopted as modified*, 358 NLRB 1556 (2012) (granting union's petition to revoke subpoena and finding communications between union and respondent's customers, vendors, travel agents, and celebrities, and press releases and emails about media interviews not reasonably relevant to allegations in complaint). GRI should not be permitted to use the Board's subpoena process to conduct such an unwarranted fishing expedition.

To the extent GRI seeks information from the Union concerning the type of work performed by its own foreign workers, its efforts are misplaced. The Union's communications with third parties would not provide GRI with information concerning the type of work actually performed by these employees. Rather, as the employer of these employees (or the entity that retained these employees),² GRI's *own records* concerning the type of work performed by these employees are directly relevant to GRI's inquiries. The Union's communications with unrelated parties, if any, concerning the Union's understanding of the work performed by foreign employees, are not relevant to the issue of whether these employees, in fact, performed bargaining unit work.

² It is the Union's understanding that some or all of the foreign national employees working at GRI's Amarillo facility are actually employed by the Respondent's parent company or an affiliate of Respondent's parent company.

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that on this 28th day of March, 2019, the foregoing Reply to Respondent's Response to Petition to Revoke in Part Subpoena Duces Tecum No. B-1-14E1AIN was e-filed using the Board's electronic filing system. The undersigned further certifies that a copy of the filing was served on this 28th day of March, 2019 by e-mail upon the following parties:

Kelly Utsinger, Esq.
Underwood Law Firm, P.C.
500 South Taylor, Suite 1200
Amarillo, TX 79105
Telephone: (806) 376-5613
Fax: (806) 379-0316
Kelly.Utsinger@uwlaw.com

Autum L. Flores, Esq.
Underwood Law Firm, P.C.
500 South Taylor, Suite 1200
Amarillo, TX 79105
Telephone: (806) 376-5613
Fax: (806) 379-0316
Autum.Flores@uwlaw.com

/s/ Keith R. Bolek

Keith R. Bolek