

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES, SAN FRANCISCO OFFICE**

NP RED ROCK LLC d/b/a  
RED ROCK CASINO RESORT SPA

and

Cases 28-CA-244484  
28-CA-250950

CLAUDIA MONTANO, an Individual

and

Cases 28-CA-250229  
28-CA-250282  
28-CA-250873  
28-CA-252591  
28-CA-253276  
28-CA-254470  
28-CA-254510  
28-CA-254514  
28-CA-260640  
28-CA-260641  
28-CA-262187  
28-CA-262803  
28-CA-164605

NP BOULDER LLC d/b/a  
BOULDER STATION HOTEL & CASINO

and

Case 28-CA-254155

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS  
a/w UNITE HERE INTERNATIONAL UNION

NP PALACE LLC d/b/a  
PALACE STATION HOTEL & CASINO

and

Case 28-CA-254162

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS  
a/w UNITE HERE INTERNATIONAL UNION

NP RED ROCK LLC d/b/a  
RED ROCK CASINO RESORT SPA

and

Case 28-RC-252280

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS  
a/w UNITE HERE INTERNATIONAL UNION

**ORDER GRANTING CHARGING PARTY’S PETITION TO REVOKE  
RESPONDENT’S SUBPOENA DUCES TECUM B-1-1ADO6W5**

The Charging Party Union petitions to revoke a subpoena duces tecum (B-1-1ADO6W5) that Respondent Red Rock served to the Union on October 12 for the upcoming hearing in this consolidated unfair labor practice and postelection objections proceeding.<sup>1</sup> This is the second Respondent subpoena duces tecum the Union has petitioned to revoke. The Union also petitioned to revoke a previous subpoena duces tecum (B-1-1ADOBKR), which I granted and denied in part by order dated October 13.

Like Respondent’s prior subpoena, the instant subpoena requests a number of documents regarding the Union’s organizing campaign prior to the December 19–20, 2019 representation election. Specifically, it requests:

1. A complete copy of the “WE ARE RED ROCK!” booklet, or similar booklets, published and/or distributed by the Union prior to the representation election at Red Rock in December 2019.
2. Copies of all signed release forms obtained by the Union in connection with the “WE ARE RED ROCK!” booklet, or similar booklets, published and/or distributed by the Union prior to the representation election at Red Rock in December 2019.
3. Documents reflecting any communications by or between the Union’s agents and the Respondent’s employees or former employees concerning requests or demands to revoke signed release forms obtained by the Union in connection with the “WE ARE RED ROCK!” booklet, or similar booklets, published and/or distributed by the Union prior to the representation election at Red Rock in December 2019.
4. Documents identifying locations where, and dates/times when, the “WE ARE RED ROCK!” booklet, or similar booklets, were distributed, or were intended to be distributed, prior to the representation election at Red Rock in December 2019.

As with its prior subpoena, Respondent asserts that these requests are relevant to whether a remedial *Gissel* bargaining order is appropriate as alleged in the consolidated complaint. Specifically, Respondent asserts that the requested information is relevant to whether “the Union had the support of a majority of employees, at least up until a few days before the election, which would undermine the General Counsel’s theory that Respondents’ alleged unfair labor practices

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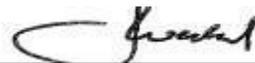
<sup>1</sup> The Union filed the petition to revoke on October 13, and the Respondent filed an opposition on October 20. Although the petition is titled “Petition to Partially Revoke,” it appears to request that all four of the requests be revoked or otherwise limited. See, e.g., Pet. at 7.

caused the Union’s loss of support.” Resp. Opp at 5 n. 4.<sup>2</sup> However, as discussed in the October 13 order, the Board applies an objective test in determining the appropriateness of a *Gissel* bargaining order based on a union’s preelection card majority, i.e., whether the employer committed unfair labor practices “that tend to undermine the union’s majority and make a fair election an unlikely possibility” (*NLRB v. Gissel Packing Co.*, 395 U.S. 575, 579 (1969)). Thus, evidence regarding whether the employer’s preelection unfair labor practices actually caused the Union’s failure to win a majority of the votes in the election is irrelevant. See *RAV Truck & Trailer Repairs, Inc.*, 369 NLRB No. 36, slip op. at 15 (2020); *A.S.V., Inc.*, 366 NLRB No. 162, slip op. at 57 (2018); *Broadmoor Lumber Co.*, 227 NLRB 1123, 1137 n. 16 (1977); and *Altman Camera Co.*, 207 NLRB 940, 941 (1973), *enfd.* 511 F.2d 319 (7th Cir. 1975).

Respondent argues that this case is different because the General Counsel’s consolidated complaint specifically alleges that the employer’s alleged unfair labor practices “directly impacted the Union’s support among a majority of Red Rock Unit employees” (par. 7(e)(8)). However, this allegation is properly read in the context of the immediately preceding allegations, which allege that Respondent’s unlawful conduct “was directed at a majority of Red Rock Unit employees” (par. 7(e)(5)); that all of Respondent’s unit employees “learned or were likely to learn of” the unlawful conduct (par. 7(e)(6)); and that the unlawful conduct “followed immediately on the heels of Respondent’s knowledge the Union had turned its organizing efforts toward” Red Rock (par. 7(e)(7)). In this context, it is more likely that the GC intended to allege that the Respondent’s alleged unlawful conduct directly impacted a majority of the unit employees (a common objective factor considered by the Board), rather than to signal that the GC is seeking to revisit and revise the longstanding and recently reaffirmed *Gissel* objective test in this and future cases.<sup>3</sup>

Accordingly, the Union’s petition is granted and Respondent subpoena duces tecum B-1-1ADO6W5 is revoked in its entirety.

Dated, San Francisco, California, October 21, 2020



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Jeffrey D. Wedekind  
Administrative Law Judge

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<sup>2</sup> Respondent’s opposition asserts that the union booklet was circulated the week of the election and indicated that 747 (55.6 percent) of the 1343 unit employees supported the Union.

<sup>3</sup> The General Counsel did not advise otherwise at the October 14 prehearing conference, after issuance of the October 13 order. If the General Counsel does advise otherwise at some point before or at the hearing, Respondent may request reconsideration of both this and the October 13 order.

Served by email on the following:

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