

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Applicant,	:	
	:	
v.	:	Civil No. 19-cv-19849
	:	
ALARIS HEALTH AT ROCHELLE PARK,	:	
	:	
Respondent.	:	

**APPLICATION OF THE NATIONAL LABOR RELATIONS BOARD  
FOR ORDER ENFORCING ADMINISTRATIVE  
SUBPOENA DUCES TECUM**

The National Labor Relations Board (Board), an administrative agency of the Federal Government, applies to this Court for an order compelling compliance with an administrative subpoena *duces tecum* that the Board issued and served on Respondent Alaris Health at Rochelle Park (Alaris Rochelle). This Application, which is accompanied by a supporting memorandum and a proposed order, is made under Section 11(2) of the National Labor Relations Act (Act), as amended, 29 U.S.C. § 161(2). In support of this application, the Board states as follows:

1. The Board is an administrative agency of the United States Government created by the Act, and empowered to administer the provisions of the Act, including the issuance of subpoenas in furtherance of its investigation of matters within its jurisdiction. Section 11(2) of the Act, *supra*, supplies jurisdiction to the United States district courts, upon application of the Board, to order compliance with those subpoenas.

2. Respondent Alaris Rochelle admits that it operates a nursing home and rehabilitation center in Rochelle Park, New Jersey, which is within this judicial district. (Doc. 1, Ex. A.)

3. This Application arises from the Board's investigation into whether Alaris Rochelle has complied with a judgment entered by the United States Court of Appeals for the Third Circuit in Case No. 18-3010 (Doc. 1, Ex. B) on October 19, 2018. That judgment summarily enforced a May 10, 2018 Decision and Order issued by the Board (reported at 366 NLRB No. 86) (Doc. 1, Ex. C) finding that Alaris Rochelle committed unfair labor practices in violation of the Act, by unilaterally implementing a change to its holiday pay practice on September 8, 2016, without notifying or bargaining with 1199 SEIU

United Health Care Workers East. To remedy this unlawful conduct, the Board's court-enforced order requires Alaris Rochelle to, among other things, rescind the change in terms and conditions of employment for its bargaining unit employees and make its employees whole for any loss of earnings as a result of the unilateral change. The order also requires Alaris Rochelle to:

provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of th[e] Order.

(Doc. 1, Ex. C (emphasis added)).

4. On September 25, 2019, the Board's Contempt, Compliance, and Special Litigation Branch (CCSLB) emailed a letter to David S. Jasinski, counsel for Alaris Rochelle, seeking his client's compliance with the Third Circuit's judgment. (Doc. 1, Ex. D.) The letter also requested the production of payroll records to assist the Board's Region 22 office's computation of amounts owed pursuant to the Judgment. It also requested other documents needed to assess Alaris Rochelle's compliance with the Judgment. Finally, the letter asked for a list of Alaris Rochelle's agents who could testify regarding Respondent's

compliance with the Judgment. CCSLB's letter requested production of the documents and the witness list by October 7, 2019 and warned that absent their receipt, CCSLB would subpoena the information from Jasinski's client.

5. On October 8, 2019, having received no response to its September 25 letter, the Board issued Subpoena Duces Tecum B-1-16SCLHB to Alaris Rochelle (Doc. 1, Ex. E), which requested substantially the documents and information CCSLB requested in its October 8 letter, to wit:

1. All payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of the judgment of the United States Court of Appeals for the Third Circuit.

2. All payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, for all pay periods encompassing one or more holidays since October 19, 2018, sufficient to show whether employees received holiday pay or time off for those holidays.

3. Records of accrued and expended leave for all employees covered by the collective bargaining agreement between Alaris Health at Rochelle Park ("Rochelle Park") and 1199 SEIU United Healthcare Workers East ("the Union") who have worked since October 19, 2018.

4. Any and all documents, including policy circulars, announcements, employee handbooks, or like documents, upon which Rochelle Park relies in asserting that the enjoined unilateral change has been rescinded pursuant to the Third Circuit's judgment.

5. The names, addresses, phone numbers, and email addresses of all employees covered by the collective bargaining agreement between Rochelle Park and the Union.

(Doc. 1, Ex. E, pp. 4-5).

6. Consistent with Section 102.4(b) of the Board's Rules and Regulations, 29 C.F.R. § 102.4, Respondent was served with the subpoena by certified mail, which was received on October 12, 2019.

(Doc. 1, Ex. F.) A copy of the subpoena was also emailed to Jasinski, with a reminder that the responsive documents were due to be produced by October 23, 2019. (Doc. 1, Ex. G).

7. On October 30, 2019, having received no response to its subpoena from either Alaris Rochelle or Jasinski, CCSLB sent a reminder email to Jasinski, attaching another courtesy copy of the subpoena and warned that absent compliance, CCSLB would "move for enforcement and associated costs and attorneys' fees." (Doc., Ex. H).

8. Section 11(1) of the Act allows any person served with a subpoena to petition the Board to revoke the subpoena within five days of service.

The face of the subpoena served on Alaris Rochelle explains this procedure. Alaris Rochelle has filed no such petition.

9. Having received no documents or any other response to the subpoena, the Board filed an application for enforcement with this Court on or about November 5, 2019. (Doc. 1)

10. Respondent made a partial production by e-mail dated November 25, 2019.

11. By e-mail the same date, counsel for the Board informed Respondent that payroll records for the period from 2016 to 2018 were not produced.

12. Counsel for the Board followed up to request outstanding records by e-mail dated January 14, 2020, and again on February 20, 2020.

13. Respondent forwarded certain payroll records by means of three separate e-mails dated February 20, 2020.

14. By e-mail dated March 3, 2020, counsel for the Board explained that the production was insufficient because, per paragraph 2 of the subpoena, it lacked daily schedules necessary to determine, among other things, holiday pay due and owing.

15. Per the Board's May 19, 2020 status report (Doc. 7), the parties negotiated a series of extensions for Respondent's production of outstanding documents due to the coronavirus. Respondent indicated documents were forthcoming, and the Board remained hopeful of same.

16. By e-mail dated June 22, 2020, Respondent produced additional documentation by three separate e-mails.

17. Per its June 24, 2020 status report (Doc. 9), the Board requested that it be permitted an additional 30 days to file another status report following a review of Respondent's production. The extension was granted the following day (Doc. 10).

18. By e-mail dated July 22, 2020, counsel for the Board requested clarification on the meaning of certain payroll codes and informed Respondent that they had failed to produce certain payroll and holiday daily records.

19. By order dated August 3, 2020 (Doc. 12), the Court granted the Board's July 27, 2020 request for an additional 30 days for a status report to be filed (Doc. 11), to allow Respondent time to correct the deficiencies noted in paragraph 18 above.

20. The Board in its September 2, 2020 status report (Doc. 13) requested permission to file an additional status report in 30 days to allow it time to determine whether all responsive documents had been received. The Court granted the request the following day. (Doc. 14).

21. In its October 6, 2020 status report (Doc. 15) the Board indicated it was working with Respondent to obtain punch cards (i.e. timecards required by both the subpoena and the Third Circuit's order) and requested an additional 30 days to file a status report to update the Court on that effort. The Court granted the Board's request by order dated October 8, 2020 (Doc. 16).

22. In its final status report of November 9, 2020 (Doc. 17), the Board indicated that: it had identified deficiencies in Respondent's production; it had re-requested the documents and sought clarification on the meaning of certain records (Doc. 17, Ex. 1)); and Respondent had failed to make such clarifications or fully produce the requested records (Doc. 17, Ex. 3). The Board thereforerequested that its enforcement application be processed.

23. By order dated November 17, 2020, the Court ordered the Board to refile its application, along with any updates, by December 8, 2020. (Doc. 18).

24. The Board has no further updates to report, as it has received no further contact from Respondent since the last status report was filed. And the following deficiencies identified both in the Board's November 9, 2020 status report and letters to Respondent (Doc. 17, Ex. 1, 3) remain:

- A. With respect to paragraphs 1 and 2 of the subpoena, Alaris Rochelle has failed both to produce requested timecards and to deny under oath that they exist.
- B. There are significant unanswered questions as to the meaning of certain records that have been produced (particularly payroll registers and schedules).
- C. Production under paragraph 5 of the subpoena remains incomplete, with Alaris Rochelle improperly arguing that the Board should seek complete contact information for employees from a third-party union, despite the fact that it was Alaris

Rochelle that provided the third-party union with the requested information.

25. As noted previously, Section 11(2) of the Act specifically authorizes the Board to make an “application” to an appropriate district court for a summary disposition of the Board’s request for subpoena enforcement.

26. Respondent’s failure and refusal to produce the outstanding subpoenaed documents has impeded and continues to impede the Board in its investigation of the matters before it and has prevented the Board from carrying out its duties and functions under the Act.

The undersigned verifies under penalty of perjury that the foregoing is true and correct.

**WHEREFORE** the Applicant, National Labor Relations Board, respectfully requests that this Court:

(A) Issue an order to show cause forthwith directing Respondent to show cause, if there be any, why an order should not issue directing it

to appear before an agent of the Board to produce documents in compliance with Subpoena *Duces Tecum* B-1-16SCLHB;

(B) Upon consideration of Respondent's response to the order to show cause, issue an order requiring Respondent to, within fourteen calendar days, provide to the Board the documents requested in Subpoena *Duces Tecum* B-1-16SCLHB;

(C) Award the Board its costs and attorneys' fees incurred in preparing the instant application, by the procedure set forth in the proposed order; and

(D) Provide the Board such other and further relief as may be necessary and appropriate.

Respectfully submitted,

/s/ Kevin J. Hobson  
*Trial Attorney*  
[Kevin.Hobson@nlrb.gov](mailto:Kevin.Hobson@nlrb.gov)  
202-273-0102

PAUL THOMAS  
*Trial Attorney*  
[Paul.Thomas@nlrb.gov](mailto:Paul.Thomas@nlrb.gov)  
202-273-3788

KEVIN P. FLANAGAN  
*Supervisory Attorney*  
[Kevin.Flanagan@nlrb.gov](mailto:Kevin.Flanagan@nlrb.gov)  
202-273-2938

Contempt, Compliance, and  
Special Litigation Branch

National Labor Relations Board  
1015 Half St. SE  
Washington, DC 20003

Dated: December 8, 2020  
Washington, D.C.

## CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2020, copies of the foregoing Application of the National Labor Relations Board for Order Enforcing Administrative Subpoenas Duces Tecum, including the Memorandum in Support, and the [Proposed] Order Enforcing Subpoena, were filed electronically with the Court's CM/ECF system. And, I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/Kevin J. Hobson  
KEVIN HOBSON  
*Trial Attorney*  
[Kevin.Hobson@nlrb.gov](mailto:Kevin.Hobson@nlrb.gov)  
202-273-0102