

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

University of Chicago)	
)	
Employer,)	
)	
and)	Case No. 13-RC-198325
)	
Graduate Students United, IFT, AFT,)	
AAUP, AFL-CIO)	
Petitioner.)	

PETITION TO REVOKE SUBPOENA

Petitioner Graduate Students United, IFT, AFT, AAUP, AFL-CIO, pursuant to Section 102.31 of the Board's Rules, petitions to revoke the second subpoena duces tecum served on the Union by the Employer. A copy of such subpoena, which was served on the Union by email on May 22, 2017 at 7:58 pm, is attached to this Petition. The reasons for this Petition To Revoke Subpoena are as follows:

1. The subpoena is overly broad, unduly burdensome and beyond the proper scope of a subpoena. There is no general right to discovery in representation proceedings. Section 102.31 of the Board's Rules provides that a subpoena may require the attendance and testimony of witnesses and seek "the production of any evidence, including books, records, correspondence, or documents, in their possession and control." The subpoena here goes beyond such scope and is in the nature of a general broad discovery request. Searching for documents that may fall within the scope of the subpoena would take a good deal of time and would require a recess from the hearing to allow counsel for the Union to review any such documents. Moreover, most of the documents that may fall

within the scope of the subpoena are within the control of the Employer. The subpoena is thus unduly burdensome.

The subpoena is almost identical to the first subpoena duces tecum served on the Union by the Employer. The Union's petition to revoke that subpoena was allowed. The second subpoena includes 9 of the 11 requests set forth with the first subpoena virtually unchanged. Requests 1 through 8 of the second subpoena are the same as Requests 2 through 9 of the first subpoena except that the initial word "all" was deleted in such requests; Request 5, which requests documents showing that the petitioned-for individuals are students, was modified to state that the Employer seeks documents that show that such individuals are students to the exclusion of being employees under the Act; and Request 8, which requests all documents that the Union intends to use as exhibits at the hearing, was changed to allow for redaction of the names of Union supporters.

The omission of the word "all" and the other changes do not alter the overly broad scope and unduly burdensome nature of the requests.

2. Any documents that relate to whether the petitioned-for individuals are employees under the Act would for the most part be documents that are within the possession and control of the Employer.

3. Any documents that relate to whether the petitioned-for individuals are students to the exclusion of being employees under the Act would also be in the possession and control of the Employer.

4. The Employer through the subpoena seeks advance notice of documents the Union may seek to introduce as exhibits, despite the fact that there is no provision in the Board's rules or procedures requiring the Union to produce such information.

5. To the extent the subpoena seeks any affidavits or witness statements that were provided to the Board, such documents are irrelevant and there is no basis for the production of any such documents, as the hearing in this case is a non-adversarial investigatory proceeding. Moreover, counsel for the Union, prior to the service on the Union of the second subpoena, informed counsel for the Employer that the Union did not provide the Board with any affidavits or witness statements as part of the Board's investigation of the Union's Petition in this case.

6. The subpoena is overly broad to the extent that it seeks documents in the possession of Union members or supporters, as such individuals are not agents of the Union.

WHEREFORE, the Union requests that the second subpoena duces tecum served on the Union be revoked.

Respectfully submitted,


Melissa J. Auerbach

Attorneys for Charging Party AFSCME Council 31

Dated: May 30, 2017

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CERTIFICATE OF SERVICE

I certify that on May 30, 2017, I served the foregoing Petition to Revoke Subpoena on the following counsel for the Employer by hand delivery to counsel present at the hearing in this case on such date and by email:

Steven J. Porzio
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Melissa J. Auerbach

SUBPOENA DUCES TECUM

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

To Custodian of records for Graduate Students United

As requested by The University of Chicago, through counsel Proskauer Rose LLP

whose address is 5801 South Ellis Avenue Chicago IL 60637
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE a Hearing Officer

of the National Labor Relations Board

at National Labor Relations Board, Dirksen Federal Building, 219 South Dearborn St, Suite 808

in the City of Chicago, IL

on May 23, 2017 at 9:00 AM or any adjourned

or rescheduled date to testify in University of Chicago
13-RC-198325

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-WP1JMH

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at

Dated:



Philip A. Wiseman

Chairman, National Labor Relations Board

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

RETURN OF SERVICE

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

- by person
- by certified mail
- by registered mail
- by telegraph
- by leaving copy at principal office or place of business at _____

(Check method used.)

on the named person on

(Month, day, and year)

(Name of person making service)

(Official title, if any)

CERTIFICATION OF SERVICE

I certify that named person was in attendance as a witness at

on _____
(Month, day or days, and year)

(Name of person certifying)

(Official title)

Attachment to Subpoena Duces Tecum No. B-1-WP1JMH

Case No. 13-RC-198325

Definitions and Instructions

In responding to the Subpoena, all designated documents in your possession, custody, or control are to be produced, including, but not limited to, documents in the possession, custody or control of your agents, attorneys, investigators (including Union members), or any third party or parties to whom you have surrendered possession, custody or control, or who, upon your request, would surrender possession, custody or control.

As used in this Attachment to Subpoena, the term "Petition" refers to the amended representation petition (and its original petition) filed by the Graduate Students United, IFT, AFT, AAUP, AFL-CIO (the "Union") in the above-referenced matter, on May 17, 2017.

As used in this Attachment to Subpoena, the term "Petitioned-for Graduate Students" includes any individuals holding positions within the petitioned for unit described in the Petition.

As used in this Attachment to Subpoena, the term "document" has its broadest possible meaning, including but not limited to communications (electronic or otherwise), statistics, analysis, notes, internal documents, postings, affidavits, notices, etc.

As used in this Attachment to Subpoena, the terms "you," "your" or "Union" refer to the Union and any of its representatives or agents.

As used in this Attachment to Subpoena, the term University refers to the University of Chicago.

This Subpoena does not seek documents covered by the attorney-client privilege and/or the attorney work-product doctrine.

This Subpoena does not seek documents that require the Union to produce documents that explicitly identify Petitioned-for-Graduate Students and whether they have engaged in protected concerted activity.

This Subpoena does not seek documents that are publicly available on University of Chicago public websites.

This Subpoena does not seek documents created before May 8, 2016.

This request is continuing in character and if additional responsive documents come to the Union's attention following the date of production, such documents must be promptly produced.

The following subpoenaed documents should be produced, excluding any items provided to the Union by the University in response to any subpoena from the Union:

1. Documents related to instructional or research services rendered to the University by Petitioned-for Graduate Students, which the Union believes reflect or do reflect the

payment of tangible and/or material compensation for such services or the exercise of control by the University over performance of such services.

2. Documents that the Union believes show or do show Petitioned-for Graduate Students receive tangible and/or material compensation as *quid pro quo* for instructional or research services rendered to the University.
3. Documents related to the evaluation of teaching or research performed by Petitioned-for Graduate Students in the academic departments identified in the Petition, whether issued by a department, or any other unit of the University.
4. Documents that show a relationship between the University's evaluation of teaching or research performed by Petitioned-for Graduate Students and the amount of stipend the Petitioned-for Graduate Students receive.
5. Documents that show that the Petitioned-for Graduate Students are students to the exclusion of being "employees" as defined by the National Labor Relations Act.
6. Documents showing discipline of Petitioned-for Graduate Students based on teaching or research performed by Petitioned-for Graduate Students in the academic departments identified in the Petition, whether issued by a department, or any other unit of the University.
7. Documents the Union intends to or will use as exhibits in the pre-election hearing in this matter, excluding (by redaction, if necessary) the identity of union supporters.
8. Documents the Union believes show or do show that Petitioned-for Graduate Students are "employees" as defined by the National Labor Relations Act.
9. All documents, including affidavits or witness statements the Union provided to the National Labor Relations Board in support of or as part of the Board's investigation of the Petition.