

**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 subpoena duces tecum served on the Union. A copy of such subpoena is attached to this Petition. The reasons for this Petition To Revoke Subpoena are as follows:

1. The attached subpoena duces tecum was served at the Union by email on May 19, 2017 at 10:12 pm.

2. 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, and thus the subpoena is unduly burdensome.

3. 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.

4. Any documents that relate to whether the petitioned-for individuals are students would also be in the possession and control of the Employer, and there is no dispute that the petitioned-for individuals are students.

5. The subpoena requests documents that are irrelevant to the issues in this hearing, including documents relating to the Union's organizing campaign. Moreover, the Courts have held that the identity of union supporters in an organizing drive is protected by the freedom of association protected by the First Amendment to the United States Constitution. *International Union v. Garner*, 102 F.R.D. 108 (M.D. Tenn. 1984). See *Patterson v. Heartland Industrial Partners*, 225 F.R.D. 204 (N.D. Ohio 2004) (holding that identities of employees involved in union organizing drives would be protected by an associational privilege, but denying application of privilege because plaintiff agreed to redaction of names of employees from documents to be produced). These protections are necessary to protect the right to engage in concerted activity without employer retaliation and to encourage individuals to come forward and to supply information to ensure that the labor laws are enforced. These considerations apply with even more force in election proceedings than in unfair labor practice proceedings, because the employees in an election proceeding, such as those in this case, have no union representation to protect them against retaliation.

6. The subpoena requests the production of documents that are protected from disclosure on the basis of privilege protecting a union's communications with its supporters. Federal law and state law protect the right of unions to communicate with their supporters without interference from employers. The Board has held that a union steward cannot be ordered to disclose the contents of the conversations he had with a co-worker who had been disciplined in connection with an on-the-job injury. *Cook Paint and Varnish Company*, 258 NLRB No. 166 (1981). The Board reasoned that consultation between an employee and his union steward "constitutes protected activity in one of its purest forms." It followed from this reasoning that forcing disclosure of the information manifestly restrained "employees in their willingness to candidly discuss actions with their chosen representatives" and that forced disclosure of the information would "inhibit stewards in obtaining needed information" that would assist them in carrying out their representational activities. Similarly, Illinois state law establishes a privilege between agents of a union and the individuals they represent. 735 ILCS 5/8-803.5(a).

7. The Employer through the subpoena in effect seeks advance notice of individuals the Union may call as witnesses and 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.

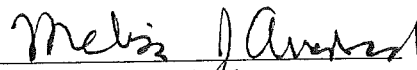
8. To the extent the subpoena seeks any affidavits or witness statements that may exist, such documents are irrelevant and there is no basis for the production of any such documents, as the hearing in this case is a non-adversarial investigatory proceeding.

9. Many of the documents requested are exempt from disclosure as attorney-client privileged or attorney work product.

10. The subpoena is overly broad to the extent 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 subpoena duces tecum served on the Union be revoked.

Respectfully submitted,


Melissa J. Auerbach

Attorneys for Charging Party AFSCME Council 31

Dated: May 22, 2017

Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich
8 South Michigan Ave., 19th Floor
Chicago, Illinois 60603
phone/312-372-1361
fax/312-372-6599
mauerbach@laboradvocates.com

CERTIFICATE OF SERVICE

I certify that on May 22, 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
sporzio@proskauer.com

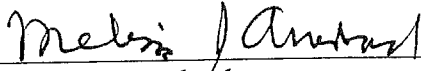
Paul Salvatore
psalvatore@proskauer.com

Zachary D. Fasman
zfasman@proskauer.com

Allan H. Weitzman
aweitzman@proskauer.com

Steven Pearlman
spearlman@proskauer.com

Alex Weinstein
aweinstein@proskauer.com



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

National Labor Relations Board, Dirksen Federal Building, 219 South Dearborn St, Suite 808
 at Chicago, IL
 in the City of

on 5/22/17 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-WP1RMT

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

Issued at .

Dated:



Philip A. Vitello
 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.)

other - by email
 per consent of Union
 and Union Council

on the named person on

Christy Cooper - Melissa Aurbach 5/19/17

(Month, day, and year)

Steven T. Porens

(Name of person making service)

Attorney

(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-WP1RMT

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 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. All documents used in preparation for filing of the Petition (excluding any authorization cards).
2. All documents related to any instructional or research services rendered to the University by Petitioned-for Graduate Students, including, but not limited to, documents that 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.
3. All 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.

4. All documents related to the evaluation of any teaching or research performed by any Petitioned-for Graduate Students in any of the academic departments identified in the Petition, whether issued by a department, or any other unit of the University.
5. All documents that show any relationship between the University's evaluation of any teaching or research performed by any Petitioned-for Graduate Students and the amount of stipend the Petitioned-for Graduate Students receive.
6. All documents that show that the Petitioned-for Graduate Students are students.
7. All documents related to any discipline of Petitioned-for Graduate Students based on any teaching or research performed by any Petitioned-for Graduate Students in any of the academic departments identified in the Petition, whether issued by a department, or any other unit of the University.
8. All documents the Union intends to or will use as exhibits in the pre-election hearing in this matter.
9. All documents the Union believes show or do show that Petitioned-for Graduate Students are "employees" as defined by the National Labor Relations Act.
10. All documents, including affidavits or witness statements the Union provided to the National Labor Relations Board in support of or in investigation of the Petition.
11. All documents, including affidavits or witness statements the Union prepared, gathered or collected.