UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERSTATE POWER TOOLS AND MACHINING INC., d/b/a INTERSTATE RENTALS

and **Case 25–CA–323892**

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL–CIO

Derek A. Johnson, Esq.,
for the General Counsel.
Jeremy C. Moritz, Esq.,
for the Respondent.
Brad H. Russell, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

G. REBEKAH RAMIREZ, Administrative Law Judge. On August 15, 2023, the International Union of Operating Engineers, Local 150, AFL–CIO (the Union) filed the charge giving rise to this case. The General Counsel issued a complaint and notice of hearing on April 26, 2024. The complaint alleges that Interstate Power Tools and Machining, Inc. d/b/a Interstate Rentals (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by issuing subpoenas duces tecum to employees and the Union in connection with a National Labor Relations Board (Board) hearing in a separate case that requested documents related to employees' union and protected concerted activities. Respondent timely filed an answer, as amended, in which it denied all alleged violations of the Act.

The hearing in this case opened on August 13, 2024 via Zoom format. The parties moved into evidence joint exhibits and joint stipulated facts. No witnesses were called. The parties jointly agreed that this case be decided based upon the formal papers, stipulated facts and exhibits, and the parties' post–hearing briefs.

On the entire record, and after considering the briefs filed by the General Counsel, Respondent, and the Union,[1] I make the following:

[1] Abbreviations used in this decision are as follows: "Jt. Exh." for joint exhibits, "GC Exh." for General Counsel's exhibits, "GC Br." for General Counsel's brief, "CP Br." for the Charging Party Union's brief, and "R. Br." for Respondent's brief. Although I have included several citations in this

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent has been a corporation, with an office and place of business in Valparaiso, Indiana, and has been engaged in the sale and rental of construction tools and equipment. In conducting its operations during the twelve months prior to April 26, 2024, Respondent purchased and received goods valued in excess of $50,000 from points outside of the state of Indiana. Accordingly, Respondent admits, and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

In addition, Respondent admits, and I find that the Charging Party is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The basic facts of this case were stipulated. (Jt. Exh. 10.) Tim Ammons began working for Respondent in around September 1997 as a mechanic. Rich Jania began working for Respondent in around June 2017 as a shop technician. Ammons and Jania were known to talk to each other while employed by Respondent.

On March 11, 2022, the Union filed a petition to represent certain of Respondent's employees. An election was conducted on April 14, 2022, and the Union was certified as the exclusive collective–bargaining representative for Respondent's mechanics, shop technicians, and truck drivers on April 22, 2022.

On about June 20, 2022, Jania notified Respondent he would be engaging in an unfair labor practice strike.

On September 5, 2022, Respondent terminated Ammons. Respondent informed Ammons by letter that he was terminated because on September 2, 2022, he engaged in "unprotected activity as defined by the National Labor Relations Act" when he was observed on "paid/working time placing a telephone call from a company telephone", stating "Four of them. Don't know where they are going. Call you back." The letter additionally states that Respondent reviewed call logs which revealed that the call was with Jacob Wetzel, a Union official, and that Wetzel called back following the initial exchange. Respondent claimed that at the time, the Union was engaged in "various protests and other activities at the Company's facilities and other locations over the preceding weeks." (Jt. Exh. 1.)

On about October 9, 2022, Jania resigned his employment with Respondent.

---

decision to highlight particular facts or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather on my review and consideration of the entire record for this case.

On December 28, 2022, the Regional Director for Region 25 of the Board issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the 2022 complaint) in Cases 25–CA–297605 and 25–CA–302917 on the basis of two unfair labor practice charges filed by the Union against Respondent. The hearing was scheduled for April 4, 2023.

The 2022 complaint, alleged, inter alia, that on about April 13, 2022, Respondent had required employees to attend a mandatory meeting to listen to its position regarding union activity and to discourage such activity; and that Respondent's owner, Ron Brissette, had threatened employees that if they selected the Union as their collective bargaining representative, they would lose their right to present their grievances directly to management, bargaining would start from zero, they would lose unspecified benefits, and work rules would be more strictly enforced against them. Further, the 2022 complaint alleged that on about September 2, 2022, Respondent's manager Brigitte Brissette interrogated employees about their union activities and surveilled their union activities, and that on September 5, 2022, Respondent discharged Ammons because he joined a union and engaged in concerted activities. (Jt. Exh. 2.)

Respondent filed an amended answer to the 2022 complaint on March 14, 2023. In its answer, Respondent admitted the supervisory status of Ron Brissette and Brigitte Brissette. Respondent also admitted that it held a meeting at its facility where it lawfully expressed its views and admitted that it discharged Ammons on September 5, 2022. Respondent denied violating the Act in any way. (Jt. Exh. 3.)

On about March 31, 2023, Respondent and the Union executed a bilateral settlement agreement resolving the issues alleged in the 2022 complaint. (Jt. Exh. 9.) Consequently, the 2022 complaint did not go to hearing. The settlement reflects that Tim Ammons did not desire reinstatement with Respondent.

B. The Subpoenas

In connection with the 2022 complaint hearing, on about March 22 and 23, 2023, Respondent served subpoenas duces tecum to Tim Ammons (Jt. Exh. 4), David Fagan (Jt. Exh. 5), Jacob Wetzel (Jt. Exh. 6), Jeff Valles (Jt. Exh. 7), and Rich Jania (Jt. Exh. 8.) At the time that the subpoenas were served, the Union employed Fagan as its financial secretary, and Wetzel and Valles as business agents. Around March 23, 2023, Wetzel informed Ammons and Jania that Wetzel, Fagan and Valles had received subpoenas from Respondent seeking information about their communications.

All of the subpoenas have an almost identical section termed "definitions and instructions." In pertinent part, the term "matter" is defined as referring to the 2022 complaint and underlying Board charges and the term "person" is defined as "any natural person, association … corporation … or other form of business entity, or any government or any agency, subdivision, or instrumentality thereof." Further, the term "communication" is defined as "any oral statement, dialogue, colloquy, discussion or conversation, and also means any transfers of thoughts or ideas between persons by means of documents and includes any transfer of data from one location to another by electronic or similar means." Finally, the term "document" or "documents" is defined as including "printed, recorded or reproduced by any other mechanical, electronic or visual process or written or produced by hand, agreements, communications, governmental hearings,

materials and reports, correspondence both written and electronic, telegrams, facsimile transmissions, electronic mail transmissions, memoranda, summaries of records of telephone conversations, summaries of records of personal communications or interviews … photographs, motion picture film, videotape … and all other writings, figures or symbols of any kind."

The General Counsel alleges that paragraphs 1 through 4, 7 through 10, 15, 16, 20, 23, and 24 of the subpoena served on Ammons compel him to produce documents related to his and other employees' union and other protected concerted activities in violation of the Act. The General Counsel additionally alleges that paragraphs 1 through 4 of the subpoenas served on Fagan, Valles and Wetzel, paragraphs 6 through 10 of the subpoena served on Wetzel (together, the Union subpoenas), and paragraphs 1 through 9 of the subpoena served on Jania violate the Act.[2] The alleged unlawful paragraphs state in relevant part:

1. Documents and communications including but not limited to cell phone records, text messages, direct messages on any social media platform, Teams, Slack, WebEx, Zoom, or other communication software related to and/or mentioning Interstate by or between you, the Union and/or any other person, business, entity, union, agent, employee, friend, past or current co–workers, family member, or otherwise from January 1, 2022 to the present.*

2. Documents and communications related to your (Ammons) involvement with the Union, your involvement with any other union, your employment with Interstate, your relationship with Interstate, your current employment if any, and this matter.

3. Documents and communications related to and/or mentioning any Union protest related to Interstate. *

4. Documents and communications related to and/or mentioning any employer other than Interstate regarding the Union's dispute with Interstate (without limiting generality of the foregoing, any such communications with Sunbelt Rentals, United Rentals, and any other company competitor.) *

5. Documents and communications reflecting all telephone conversations you (Ammons) have ever engaged in with any past or present Union official, including but not limited to Jeff Valles, David Fagan … (and 20 other named individuals).

6. Any and all communications including but not limited to text messages, cell phone records, direct messages on any social media platform, Teams, Slack, WebEx, Zoom, or other communication software, written correspondence of any kind, voicemails, voice memos, and notes engaged in by or between you (Ammons) and Jake Wetzel from January 1, 2022 through the present.

[2] The Union subpoenas paragraphs 1 through 4 are identical and are identical in all material respects to other paragraphs in the Ammons and Jania subpoenas. These paragraphs are marked with an asterisk.

7. Any and all photos or videos taken of or relating to picketing or protesting at Interstate, picketing or protesting at the location of any of Interstate's customers or potential customers, and/or the Union campaign that took place at Interstate (for Ammons).

8. Any and all communications by or between you (Ammons) and any other past or present Interstate employee, owner, manager, supervisor or agent from January 1, 2022 through the present.

9. Any and all cell phone and text records between August 29, 2022 and September 12, 2022 (for Ammons).

10. Any documents related to your home or personal phone records between August 29, 2022 and September 12, 2022 (for Ammons).

11. All credit, bank, or debit card statements for any card used by you from August 5, 2022 through October 5, 2022 (for Ammons).

12. Any documents, notes or recordings related to the union campaign involving Local 150 and the Company (for Ammons).

13. Any and all other documents related to this matter (for Ammons).

14. Documents and communications related to, by and by between, and/or mentioning Tim Ammons in any manner, including, but not limited to his involvement with the Union, his involvement with any other union, his employment with Interstate, his relationship with you, his current employment if any, and this matter from April 22, 2022 to the present. *

15. Any documents and communications, including but not limited to video footage, pictures, recordings, and social media posts regarding strike activity and/or picketing taking place at Interstate located at 1047 N. State Rd. 149, Valparaiso, IN 46385 or non–Interstate third party employer sites within a 100 mile radius of Interstate (for Wetzel).

16. Any documents and communications, including but not limited to video footage, pictures, recordings, and social media posts regarding following Interstate vehicles (for Wetzel).

17. Any and all phone records including texts and other messages involving you (Wetzel) and Tim Ammons between August 29, 2022 and September 12, 2022.

18. Any document related to picketing or other protests at any company customer or supplier between April 22, 2022 and the present (for Wetzel).

19. Any document related to job searches or the seeking/acceptance of alternative employment involving any company employee from April 22, 2022 through the present (for Wetzel).

20. Any and all communications between you (Jania) and Tim Ammons regarding Tim Ammons' termination of employment from Interstate.

21. Any and all communications between you (Jania) and Tim Ammons regarding your resignation and/or departure from employment with Interstate.

22. Any and all communications between you (Jania) and Tim Ammons that occurred between the beginning of your employment with Interstate on or about June 16, 2017 through the present.

23. Any and all photos or videos taken of or relating to picketing or protesting at Interstate, picketing or protesting at the locations of any of Interstate's customers or potential customers, and or the Union campaign that took place at Interstate (for Jania).

24. Any and all documents related to the 2022 Local 150 union campaign at Interstate, including but not limited to campaign materials, recordings relating to the campaign, or campaign handouts (for Jania).

25. Any and all communications by or between you (Jania) and any other past or present Interstate employee, owner, manager, supervisor, or agent from January 1, 2022 through the present.

III. DISCUSSION AND ANALYSIS

The General Counsel argues that Respondent violated Section 8(a)(1) of the Act by issuing subpoenas to employees and the Union that are overly broad, did not seek relevant information, some requests had an illegal objective, and in all instances, the employer's interest in obtaining the information was outweighed by employees' interest in keeping the nature and scope of their protected concerted activities confidential. Respondent asserts that it had a legitimate specific need for information regarding unprotected, possibly illegal activities involving its employees and the Union. As discussed below, I find that the General Counsel has proven that the subpoenas issued to employees and the Union violate Section 8(a)(1) of the Act.

Applicable legal standard

Section 8(a)(1) provides that it is an unfair labor practice to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Section 7. Section 7 guarantees employees "the right to self–organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities." 29 U.S.C. §157. The test for evaluating whether there has been a violation of Section 8(a)(1) is an objective one, i.e., whether, under the totality of the circumstances, the employer's statement or conduct would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Multi–Ad Services*, 331 NLRB 1226, 1227–1228 (2000); *Sage Dining Services, Inc.*, 312 NLRB 845, 846 (1993). In making this evaluation, the Board does not consider the employer's motive or whether the coercion succeeded or failed. *American Freightways Co., Inc.*, 124 NLRB 146, 147 (1959).

When evaluating subpoena requests, the Board will assess whether the subpoena seeks information that would disclose employees' union activities and other protected concerted activities. The Board will balance the employees' interests in not disclosing their Section 7 activities with the employer's interests in the information it seeks. The Board has consistently found that employers act with an illegal objective when serving subpoenas to current and formers employees to obtain their confidential Board affidavits. *Ampersand Publishing, LLC*, 361 NLRB 903 (2012). The Board considers such requests inherently coercive and unlawful. *Inter–Disciplinary Advantage*, 349 NLRB 480, 505 (2007). The Board has similarly protected the disclosure of the identities of employees who sign a union authorization card and have attended union meetings. *National Telephone Directory Corp*., 319 NLRB 420 (1995). The confidentiality interests of employees who have signed authorization cards and attended union meetings is paramount to the employer's need to obtain the identities of such employees for cross–examination and credibility impeachment purposes. *Id*. at 421. See also *Wright Electric, Inc.*, 327 NLRB 1194 (1999) (where the Board found that an employer violated the Act by attempting to obtain employee authorization cards through discovery in a state–court lawsuit). The Board has also found subpoenas that seek documents and communications between employees and the counsel for the General Counsel and/or Board agents to be unlawful. *Tracy Auto, L.P. d/b/a Tracy Toyota*, 372 NLRB No. 101 (2023). See also *Starbucks Corporation*, 373 NLRB No. 101 (2024) (where the Board adopted the administrative law judge's (ALJ) finding that the employer violated Section 8(a)(1) by issuing overly broad subpoenas to employees requiring them, among other things, to produce communications and documents the employees provided to the General Counsel, including their Board affidavits, recordings of meetings about their union organizing, communications amongst employees, and documents related to such communications, and communications with the union).

The General Counsel and the Union argue that I should apply the three–part test in *Guess?, Inc.*, 339 NLRB 432 (2003), in finding that the subpoenas at issue violate the Act. (GC Br. at 6–8 and CP Br. at 5–6.) In *Guess?*, the Board found unlawful an employer's attempt during a workers' compensation deposition of an employee to obtain the names of employees who attended union meetings. The Board applied a three–part test to determine whether an employer violates the Act by seeking through discovery the disclosure of employees' Section 7 activity: (1) the questioning must be relevant, (2) if relevant, it must not have an illegal objective, and (3) if the questioning is relevant and does not have an illegal objective, the employer's interest in the information must outweigh the employees' confidentiality interest under Section 7 of the Act. The Board based the third step on *National Telephone* and *Wright Electric*, supra, which were found "applicable . . . to the extent that they require a balancing of the respective interests." 339 NLRB at 434. In applying this standard at step three, while assuming arguendo that the questioning was relevant and lacked an illegal objective, the Board noted that the relevance was "only marginal" and the employer's questioning was so broad in scope that it focused neither on the actual time period of the employee's injuries nor on the union meetings when the employee was present, thus the employer's "need for the answers to *these* questions is outweighed by the employees' confidentiality interests under Section 7 of the Act." Id. at 434–435 (emphasis in original).

I note that in *Starbucks Corporation*, supra, slip op. at 9, the ALJ declined to apply the *Guess?* test reasoning that *Guess?* should be used in determining whether an employer's discovery requests in a separate proceeding are lawful and not in evaluating whether subpoenas

issued pursuant to Section 102.31 of the Board's rules and regulations are lawful. The ALJ further noted that the Board in *Tracy Auto*, supra, did not hold that the *Guess?* framework applied, but that *Guess?* would yield the same result in finding a violation of the Act concerning the subpoenas at issue in that case. *Starbucks*, slip. op. at 9, fn. 14, citing *Tracy Auto*. Consequently, the ALJ applied the balancing of interests analysis, and the Board affirmed the ALJ's decision in full. Similarly, in *Veritas Health Services d/b/a Chino Valley Medical Center*, 362 NLRB 283 (2015), the ALJ applied *National Telephone* and *Guess?* in determining that the subpoenas in that case violated the Act (finding subpoenas unlawful where information requested included communications between employees and the union, union authorization cards, and all documents relating to the distribution and/or solicitation of union cards). In affirming the ALJ, the Board held that the breadth of the subpoenas and the nature of the information requested would subject employees' Section 7 activities to unwarranted investigation and interrogation citing *National Telephone* (but not *Guess?*). *Chino Valley*, slip op. at 1, fn 1. Based on the foregoing, I will analyze the subpoena requests here applying the balancing of interests test in *National Telephone.* I note that applying the *Guess?* test would yield the same results.

Legal analysis

In each of the subpoenas at issue, Respondent sought Section 7 protected information. While the Board recognizes that employers at times have a legitimate, specific need for certain information pertaining to union activity, it will find subpoenas unlawful when the breadth of the subpoenas and the nature of the information requested, would subject employees' Section 7 rights to unwarranted investigation and interrogation. *Chino Valley Medical Center*, supra. In balancing Respondent's interests for the information and employees' Section 7 rights, I find that the subpoenas here were overly broad in violation of Section 8(a)(1) of the Act.

In all five subpoenas at issue, Respondent requested "documents and communications" related to and/or mentioning Respondent by or between the subpoena recipient and any "person" (paragraph 1). Based on the subpoenas' description of "document" and the fact that "person" includes any "government or any agency," this request would necessarily encompass an affidavit or other document provided to a Board agent, and communications with a Board agent. Respondent asserts that the subpoenas pass muster because they did not state or mention communications with the General Counsel, Board affidavits, or authorization cards. (R. Br. at 8.) I disagree. Respondent could have easily included in its instructions a carve–out for union authorization cards, Board affidavits and communications with Board agents. It did not. Instead, Respondent's instructions specifically listed "government or agency" as being included in the description of "person." The Board will find a subpoena request for Board affidavits unlawful even when an employer has explicitly included in its subpoena instructions that it was not requesting witness affidavits. See *Starbucks*, slip op. at 8. I find that these subpoena requests are overly broad on the grounds that they encompass Board affidavits, documents provided to a Board agent, and communications with a Board agent, which are all privileged against disclosure.[3]

[3] The General Counsel asserts that a reasonable reading of most of the other subpoena requests would necessarily include affidavits and other *Jencks* material provided to the Board. (GC Br. at 21–23.) I find it unnecessary to reach this conclusion since in discussing the other subpoena requests, I find they are overly broad for other reasons.

Even if these subpoena requests did not encompass Board affidavits and/or documents provided to and communications with a Board agent, which I find they do, I would still find these requests overly broad. Respondent sought all documents and communications between the subpoena recipient and the Union and/or employees, friends, past or current co–workers or family members since January 1, 2022 to the present. Similarly, in other subpoena requests, Respondent sought all communications between Ammons and/or Jania and any other past or present employee from January 1, 2022 through the present (paragraphs 8 and 25.) These requests would necessarily include all communications about the Union campaign given that the Union filed its petition for representation on March 11, 2022. There is no evidence in the record reflecting that employees did not keep their union activity hidden from Respondent. A disclosure of information relating to every document (which according to Respondent's instructions includes photos and video) and/or communications regarding the Union in this context would foreseeably have a chilling effect on employees' free exercise of Section 7 rights, including their right to keep their Section 7 activity confidential. "The confidentiality interests of employees have long been an overriding concern to the Board. Generally, an employer who seeks to obtain the identities of employees who sign authorization cards and attend union meetings violates the Act." *National Telephone* at 421. An employer may not surveil its employees to obtain such information and may not give its employees the impression that it has surveilled, or will surveil, them to obtain such information. *Eddyleon Chocolate Co.*, 301 NLRB 887 (1991). Further, an employer violates the Act if it questions its employees about this information. *Hanover Concrete Co*., 241 NLRB 936 (1979).

All of the subpoenas requested documents and communications related to and/or mentioning any union protest related to Respondent (paragraph 3), and documents and communications related to and/or mentioning any other employer regarding the Union's dispute with Respondent (paragraph 4); photos, videos, recordings, documents and/or notes, relating to picketing, protesting at Respondent's location or any customer location, strike activity, and/or the "Union campaign" (paragraphs 7, 12, 15, 18, 23–24); and documents and communications regarding following Respondent vehicles (paragraph 16) . The General Counsel asserts that these requests are entirely irrelevant to the issue of whether Ammons was lawfully discharged or to any other issues in the underlying case. Respondent, on the other hand, argues that this information is relevant to its theory that the Union was engaged in a pressure campaign involving third parties and "unprotected internal sabotage," and that all subpoena recipients were suspected of participating in unprotected activity. (R. Br. 2–3.) To support this assertion, Respondent solely relies on Ammons' termination letter. (R. Br. at 10.) The letter reflects a single instance of a phone call between Ammons and Wetzel, does not mention any other person or company, and although it mentions that the Union has been engaged in protests and other activities at the Company's facility and other locations, it does not allege that this activity was illegal, unprotected or involved secondary pressure on neutral customers. Thus, I find that Respondent has not demonstrated the relevancy of any information sought related to protesting, picketing, strike activity, other employers or customers, the following of vehicles, or the Union campaign in general.

Even assuming arguendo that the above requests are relevant, the scope of the subpoena requests is overly broad. Thus, requesting any documents or communications mentioning a union protest, picketing or the Union campaign would necessarily encompass information related to protected Section 7 conduct of employees that may have been in contact with the Union. Further,

the requests are not limited to the period of time when Ammons was terminated. On the contrary, these requests have no temporal limitation. Additionally, any information related to protests or picketing at other facilities could disclose the Section 7 activities of employees of other employers. Similarly, information about following Respondent's vehicles could disclose protected Section 7 activities of employees, and Respondent has not shown how this information relates to the issues in the underlying case. I find these requests are overly broad and would reveal Section 7 protected information that is paramount to Respondent's interests.

Another group of requests pertain to Ammons' involvement with the Union; his involvement with any other union; his current employment; every single telephone conversation he has ever had with any union official; all of his communications with Wetzel since January 1, 2022; all of his cell phone, text records, and phone records between August 29, 2022 and September 12, 2022; his credit, bank, and debit card statements from August 5, 2022 through October 5, 2022; and all of his communications with Jania, about anything, since Jania's hire date to the present (paragraphs 2, 5–6, 9–11, 13–14, 17, 20–22). I find these requests overly broad. Responsive documents for these requests could reveal the names of employees involved in union activity, and employees' union support and sentiments. Respondent is not entitled to obtain information regarding its employees' confidential communications with the Union or about the Union. Notably, Respondent requests information about every single telephone conversation and communication Ammons has had with a Union official and with Jania, with absolutely no regard to his termination date. Thus, the scope of all of these subpoena requests is too broad. With regards to the requests for Ammons' financial records, the General Counsel argues that such records could disclose any payments or benefits Ammons could have received from the Union, and that this information bears no relevance to the reasons for his termination. (GC Br. at 13.) I agree. Respondent failed to show how this information relates to the underlying issues in this case.

Finally, Respondent requested information from the Union about job searches or the seeking or accepting of alternative employment involving any employee from April 22, 2022 to the present (paragraph 19). Nowhere in the 2022 complaint or the record is there any reference to Respondent's employees seeking employment elsewhere with or without the Union's support. However, if any employee communicated with the Union concerning employment elsewhere, it would be protected Section 7 activity. This information has no bearing on the issues that the parties were litigating.

Thus, in applying the balancing test, I find that employees' rights under Section 7 to keep their protected activities confidential outweigh Respondent's need for the information in this case. Applying the *Guess?* three–step test would yield the same result. Most of the information sought in the subpoenas is not relevant to the issues being litigated by the parties. As already discussed, Ammons was discharged for making one phone call during work hours allegedly to a Union representative. Thus, his communications with other employees about the Union and/or Respondent, and documents and communications about protests and/or picketing at Respondent's location or otherwise, are not relevant. Even if some of the information requested was relevant to Respondent's defenses, Respondent did not narrowly tailor its subpoena requests to those needs. Thus, Respondent's interest in the information does not outweigh the employees' confidentiality interests under Section 7.

Respondent argues, citing *Ozark Automotive Distributors, Inc. d/b/a O'Reilly Auto Parts*, 779 F.3d 576 (D.C. Cir. 2015), that the Board must at least attempt to balance employee interests against the company's need for documents, and that this balancing was not done in this case, nor can it be done, because "[n]o one knows, not the General Counsel, not the Administrative Law Judge and certainly not the Company" what the communications surrounding the "suspected, unlawful, unprotected activity would have revealed." (R. Br. at 12.) Respondent's argument misses the mark. In *Ozark*, subpoenas were issued in relation to an election objections hearing where the employer claimed that the union had engaged in misconduct to win the election. The Board upheld a hearing officer's decision to revoke subpoenas issued by the employer that sought information concerning whether several of its employees who supported the union had actual or apparent authority to act on the union's behalf. Id. at 581. The Court reversed the Board, and determined that, in that context, the documents sought by the employer were relevant to the proceeding, at least some document requests did not implicate employee confidentiality interests, and the hearing officer should have reviewed the documents in camera to reconcile the employees' confidentiality interests with the employer's need for the documents. The issues in this case are distinguishable. Here, the General Counsel asserts that the subpoena requests themselves violate the Act, and therefore an in camera inspection would not safeguard employees' rights. I agree. Respondent's subpoenas were not narrowly tailored to seek information concerning Ammon's termination or the other limited issues in the 2022 complaint, but instead broadly sought information concerning the Union campaign, union activities and protected concerted activity of any employee, including employees of other employers. A similar argument was rejected by the Board in *Chino Valley*, where the employer asserted that it was willing to allow documents produced in response to an overly broad subpoena be inspected in camera. The Board held that "the harm is in the very request itself." *Chino Valley* at 283. Contrary to Respondent's argument, the subpoenas in *Chino Valley* not only sought information related to union authorization cards, but also, as here, to communications between employees and the union.

I also reject Respondent's argument that the subpoenas served on the Union representatives cannot be found unlawful because these individuals are not "employees" as defined by the Act. (R. Br. at 15.) The Board has previously found subpoenas served on union representatives violate the Act when they seek the production of information related to employees' union and other protected concerted activities. See *National Telephone* and *Chino Valley*, supra. Additionally, I note that Respondent's employees were aware that the Union was served with subpoenas that sought to reveal their Section 7 activities.

Respondent's constitutional affirmative defenses

In its brief, Respondent states that it incorporates its affirmative defenses concerning the constitutionality of the Board and its processes, personnel and adjudications, as set forth in its answer to the complaint. (R. Br. at 16.) Several of Respondent's affirmative defenses assert that the complaint should be dismissed based on various constitutional grounds. Respondent did not offer any arguments or present any evidence in support of its affirmative defenses, and only made bare assertions in its answer to the complaint. Therefore, I find that Respondent failed to meet its burden to establish these affirmative defenses. *Nexstar Media Group, Inc.*, 374 NLRB No. 5, slip

op. at 1, fn. 2 (2024) and *Starbucks Corp.*, 373 NLRB No. 90, slip op. at 1, fn 2 (2024).[4]

IV. CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by serving subpoenas duces tecum on employees and the Union that request information and/or documents about employees' union and other protected concerted activities.

4. Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices at its Valparaiso, Indiana facility, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

Respondent, Interstate Power Tools and Machining, Inc., d/b/a Interstate Rentals, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Serving subpoenas on employees and unions requiring them to produce information and/or documents about employees' union and/or protected concerted activities.

[4] I also note that in *Nexstar*, the Board found no merit to constitutional claims concerning Board members' insulation from presidential control citing *Humphrey's Executor v. United States*, 285 U.S. 602 (1935); that administrative law judges are unconstitutionally insulated from removal citing *Decker Coal Co. v. Pehringer*, 8 F.4th 1123, 1133–1136 (9th Cir. 2021); and that employers are entitled to a trial by jury pursuant to the Seventh Amendment citing *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48–49 (1937). The Board has also previously rejected the argument that the agency unconstitutionally combines prosecutorial and adjudicatory functions. *Jones Lang Lasalle Americas, Inc.*, 373 NLRB No. 37, slip op. at 1, fn. 1 (2024).

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.46 of the Rules be adopted by the Board and all objections to them shall be deemed waived for all purposes.

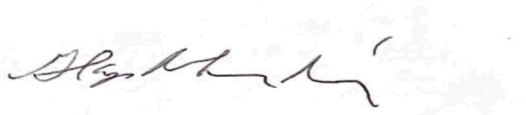
b. In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days after service by the Region, post at its Valparaiso, Indiana facility, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at any time since March 16, 2023.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 25 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., January 3, 2025



G. Rebekah Ramirez
Administrative Law Judge

[6] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID–19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT issue subpoenas to you or the International Union of Operating Engineers, Local 150, AFL–CIO, that require the production of information and/or documents about employees' union and/or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed you under Section 7 of the National Labor Relations Act.

INTERSTATE POWER TOOLS AND
MACHINING, INC., d/b/a
INTERSTATE RENTALS
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret–ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

NLRB Region 25
575 N. Pennsylvania Avenue, Ste 238, Indianapolis, IN 46204
(317) 226–7381, Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/25-CA-323892 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (317) 991-7644.