

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRED MEYER STORES, INC.
Employer

and

Case 27-RC-345867

UNITED FOOD AND COMMERCIAL WORKERS
UNION LOCAL 555
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Certification of Representative is denied as it raises no substantial issues warranting review.¹

¹ For the reasons stated in *Satellite Healthcare (Santa Rosa)*, 374 NLRB No. 25 (2026), we reject the Employer's argument that the Regional Director lacked authority to issue his Decision and Certification of Representative in the absence of a Board quorum.

To the extent the Employer's request for review asserts that the Regional Director erred in his Decision and Direction of Election, we observe that the Employer has already filed a separate request for review of that action, and the Employer may not raise additional arguments with respect to the Decision and Direction of Election in its present request for review. See Sec. 102.67(i)(1) of the Board's Rules and Regulations ("A party may not [] file more than one request for review of a particular action or decision by the Regional Director. Repetitive requests [for review] will not be considered.").

We observe that Sec. 102.66(f) of the Board's Rules and Regulations governs subpoenas in representation proceedings. Under Sec. 102.66(f), Regional Directors in representation cases have the discretion to close the record and refuse enforcement of subpoenas. See *SR-73 and Lakeside Avenue Operations LLC d/b/a Powerback Rehabilitation*, 365 NLRB 1188, 1189 fn. 2 (2017) (citing *Northern States Beef*, 311 NLRB 1056, 1056–1057 (1993)). We find that the Regional Director did not abuse his discretion by refusing to enforce the three subpoenas at issue based on the Employer's failure to properly serve those subpoenas. As the Regional Director explained, the Respondent did not even attempt to serve two of the subpoenas at issue prior to the hearing. While the Employer attempted to serve the third subpoena at issue at 4:49 p.m. on the final business day before the hearing, there is no evidence that this subpoena was accompanied by the "[w]itness fees and mileage" that are required to be paid by the "party at whose instance the witness appears" in a representation proceeding pursuant to Sec. 102.66(j) of the Board's Rules and Regulations. The Board has held that subpoenas are "defective on their face" if they are not accompanied by the required witness fees and mileage. *Rolligon Corp.*, 254 NLRB 22, 22–23 (1981) (finding that subpoenas that a union attempted to serve prior to a representation hearing "were defective because they were not accompanied by witness and mileage fees"); see also *General Shoe Corp.*, 122 NLRB 1619, 1619 fn. 2 (1959) (affirming a hearing officer's revocation of subpoenas in a representation proceeding "on the ground that the

DAVID M. PROUTY, MEMBER

JAMES R. MURPHY, MEMBER

SCOTT A. MAYER, MEMBER

Dated, Washington, D.C., February 19, 2026.

witnesses had not been tendered fees and mileage”). Thus, the third subpoena at issue was defective on its face. Given these circumstances, the Regional Director did not err by refusing to enforce the three subpoenas at issue.

Moreover, even if the Employer had properly served the three subpoenas at issue, we still would not find that the Regional Director erred by refusing to enforce them. The Employer’s request for review asserts that the three individuals the Employer was seeking to subpoena would have testified that the Employer’s pharmacy manager instructed employees “to vote in favor of the Union,” but this was not the evidence proffered by the Employer’s counsel at the objections hearing. Rather, the Employer’s counsel stated that the three individuals would testify that the Employer’s pharmacy manager encouraged employees to attend union meetings before the election and, after the election, became concerned that she would get in trouble due to her organizing activities. The pharmacy manager already gave testimony to this effect, and the seemingly duplicative evidence proffered by the Employer’s counsel would not establish that the pharmacy manager engaged in objectionable prounion conduct under *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004), for the reasons articulated in the Regional Director’s decision. Under such circumstances, we find that the Regional Director was not required to facilitate what would have amounted to nothing more than a “fishing expedition” and therefore did not abuse his discretion in declining to enforce the Employer’s subpoenas. See *SR-73 and Lakeside Avenue Operations LLC*, 365 NLRB at 1189 fn. 2, 1202 (finding that the Acting Regional Director did not abuse his discretion by refusing to enforce a subpoena that he found was, “at best, a fishing expedition” to turn up objectionable conduct).