John Henry Foster Minnesota, Inc. ***and*** **Pipefitters Local 455.** Case 18–RC–306175

September 4, 2026

ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

The Employer's Request for Review of the Regional Director's Corrected Decision and Order on Challenged Ballots, pertinent portions of which are attached, is granted as it raises substantial issues warranting review.[1] Having carefully considered the issues, we conclude that the proceeding should be remanded. We find that the Regional Director abused her discretion by affirming the Hearing Officer's revocation of the Employer's Subpoena Requests Nos. 4 and 5, but only to the extent that the Employer seeks documentation pertaining to whether the employees at issue intended to return to their struck positions after the election. As explained below, the Hearing Officer should have conducted an in-camera inspection of any such documents.

The central issue in this case is whether employees Andrew Medrano and Michael Foux were eligible voters as economic strikers or, instead, whether they were ineligible because they were not on strike, but rather, they had quit prior to the rerun election or otherwise abandoned their interest in their struck jobs.[2] The Regional Director found that the Employer failed to prove that these individuals were ineligible, but only after revoking subpoenas issued by the Employer seeking information relevant to their alleged job abandonment.

Subpoena Request No. 4 sought "[a]n original or true copy of all communications and records, including but not limited to e-mails, letters, memoranda, or notes, between Local 455, including any affiliate organization, and/or Andrew (or Andy) Medrano regarding or relating to Mr. Medrano's activities at John Henry Foster Minnesota, Inc. from January 1, 2022, through February 27, 2024." Subpoena Request No. 5 sought the same information with respect to Michael Foux's communication with the Union regarding or relating to his own activities at the Employer. At the outset of the hearing, the Employer offered to discuss narrowing the term "activities" to protect sensitive information and specifically proposed that the subpoenaed information be reviewed in camera. The Hearing Officer did not do so. Instead, when the Union objected to the subpoenas, the Hearing Officer revoked them in relevant part. The Regional Director affirmed this ruling, finding that the protection of employees' Section 7 rights outweighed the Employer's need for the requested information. See *Laguna College of Art and Design*, 362 NLRB 965, 965 fn. 1 (2015). The Regional Director also found that the revocation of the Employer's subpoenas did not significantly prejudice the Employer in the presentation of its case, asserting that the Employer could have made its case through other means.

The Guide for Hearing Officers in NLRB Representation and Section 10(k) Proceedings states that "if a party served with a subpoena contends that the items encompassed by the subpoena are irrelevant, privileged or otherwise exempt from production, the hearing officer should consider conducting an in-camera inspection. The hearing officer should also look for areas of compromise, e.g., redaction of certain information or narrowing the scope of the subpoena, in order to satisfy the subpoenaing party and allow the hearing to proceed."[3] The Hearing Officer erred in failing to follow that procedure here.

At both the hearing and in its Request for Review, the Employer articulated a particularized need for the information sought. The Employer asserts that Request No. 4 is necessary to establish that Andrew Medrano intended to quit after the election was completed, and that Request No. 5 is necessary to determine whether Michael Foux abandoned his interest in his struck job. Indeed, such information is necessary to prove its allegations that Foux quit and had no intention of returning, and that Medrano was a temporary employee. These determinations are directly relevant and material to the central issue in this matter—whether Medrano and Foux were eligible to vote in the rerun election, and consequently, whether their determinative challenged ballots should be opened and counted. We believe that a limited remand for an in-camera inspection of the relevant documents sufficiently addresses the Employer's due process concerns and protects employees' Sec. 7 rights. See *Ozark Automotive Distributors, Inc. d/b/a O'Reilly Auto Parts v. NLRB*, 779 F.3d

[1] The Board has delegated its authority in this proceeding to a three-member panel. We have exercised our discretion to examine the entire record in evaluating the request for review. See Sec. 102.67(e) of the Board's Rules and Regulations.

[2] Earlier, the Regional Director approved the parties' stipulation to vacate and set aside the results of a December 1, 2022, election and to order a rerun election, which was conducted on July 25, 2023.

[3] The Hearing Officer's Guide "is designed only to provide procedural and operational guidance to the Agency's staff and is not intended to be a compendium of substantive or procedural law, nor a substitute for knowledge of the law. Similarly, the Guide does not constitute rulings or directives of the Board or the General Counsel, and [it] is not a form of authority binding on either the Board or General Counsel." Nevertheless, we find that it provides useful guidance here.

576, 581 (D.C. Cir. 2015) (finding subpoena improperly quashed on Section 7 grounds; observing that neither the hearing officer nor the Board conducted an in-camera review or "attempted to balance those employee interests against the company's need for the documents").[4]

We do not agree with our colleague's suggestion that the Employer advanced "nothing more than speculation" to support its requests.[5] On the contrary, Foux notified the Employer that he was going to seek a different job because he needed better insurance than what the Employer was offering and thereafter obtained new employment *through the Union* that paid 25.8 percent more and provided better insurance. Medrano was a paid union salt hired by the Union to organize employers, and his duties included submitting regular reports to the Union concerning those activities. Foux did not respond to an offer of reinstatement while Medrano ended his strike and was reinstated, then resumed the strike only 11 days later. These circumstances sufficiently suggest that the subpoena might reveal documents relevant to the issues presented in this case to warrant in-camera review.[6] Moreover, we stress that the only documents that the Union must produce for in-camera review pursuant to our order are those that refer or relate to whether the employees at issue intended to return to their struck positions after the election. We also stress that the Employer proposed both discussing how the scope of the subpoena could be narrowed and in camera review at the start of the hearing. Accordingly, and contrary to the dissent, this case does not present the question of whether "the Hearing Officer should have sua sponte rewritten the Employer's subpoena into something more palatable. . . ."

For all of the foregoing reasons, we remand this case to the Regional Director for further appropriate action consistent with this Decision and Order, including conducting an in-camera review of responsive documents to Subpoena Requests Nos. 4 and 5 pertaining to whether the employees at issue intended to return to their struck positions after the election. In all other respects, the request for review is denied.

Dated, Washington, D.C. September 4, 2026

James R. Murphy, Chairman

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting.

Contrary to my colleagues, I would deny review in all aspects. The Employer's Subpoena Requests Nos. 4 and 5 seek to compel the Union to produce all documents between the Union and employee-organizer Andrew Medrano, and between the Union and employee Matthew Foux, regarding or relating to their activities with the Employer. The requests, on their face, overtly target the very core of these employees' protected Section 7 activity. Under Board law, where, as here, a subpoena seeks to uncover protected activity, the requesting party must establish a particularized need for the information sufficient to outweigh the serious intrusion into and compromise of statutorily protected rights that compelled disclosure would entail. See *Laguna College of Art and Design*, 362 NLRB 965, 965 fn. 1 (2015). The Hearing Officer properly applied that standard in revoking the requests, and the Regional Director did not abuse her discretion in affirming that determination.

The Employer's Request for Review asserts that documents produced in response to the subpoenas might reveal

[4] *Veritas Health Services d/b/a Chino Valley Medical Center*, 362 NLRB 283 (2015), on which the Regional Director and the Hearing Officer relied, is readily distinguishable. There, the respondent was found to have violated the Act by issuing subpoenas *to employees* that sought information "encompassing communications between employees and the Union, union authorization and membership cards, and all documents relating to the distribution and/or solicitation of union authorization and membership cards[.]" Id. at 285 fn. 1. No such facts are present here.

[5] *U.S. v. Zolin*, 491 U.S. 554, 574 (1989), cited by the dissent, states, with respect to the attorney-client privilege, that before a district court may engage in in-camera review at the request of the party opposing the privilege to determine the applicability of the crime-fraud exception, "that party must present evidence sufficient to support a reasonable belief that in camera review may yield evidence that establishes the exception's applicability."

[6] In light of the specific facts on which we rely in support of in camera review, we reject our dissenting colleague's charge that we have effectively permitted "in-camera review 'on demand' based solely on speculation." Our dissenting colleague questions our reliance on these facts to support the subpoena, asserting that we have "agree[ed] with the Hearing Officer's finding that these circumstances do not meet the Employer's burden to show that either employee abandoned their interest in the struck job . . . ." In granting review and remanding this case, we have made no ruling on the merits. Regardless, we perceive no incongruity in the fact that a lesser showing is required to justify a subpoena for any relevant documents than to prevail on the merits on the issue for which the subpoena is sought. It would be paradoxical to require the Employer to prove that these individuals abandoned their jobs before it could subpoena documents relevant to that issue. Cf. *Burns Security Services*, 278 NLRB 565, 566 (1986) (quashing subpoena broadly seeking union records for purpose of determining whether it admitted nonguards to membership where employer presented no evidence that union had ever included nonguards in units it represented).

that the employees had plans to quit their struck positions, rendering them ineligible to vote in the rerun election.[1] However, at a full evidentiary hearing, the Employer introduced no evidence indicating that the Union possesses any such documents. Both employees testified and were extensively cross-examined about their work histories, their intentions regarding the struck positions, and the circumstances surrounding the strike, reinstatement offers, and their postelection plans. The Hearing Officer credited their testimony that they intended to return to work. In these circumstances, she reasonably found no basis to believe that the Union had additional documents bearing on the employees' intention to quit after the rerun election. She therefore concluded the Employer's sweeping demand for all communications between the Union and these employees constituted "a mere 'fishing expedition' not entitled to a subpoena from the Board." *Burns Security Services*, 278 NLRB 565, 566 (1986). As the Regional Director correctly noted, the Hearing Officer carefully weighed the speculative nature of the Employer's requests against the well-recognized harm inherent in compelling disclosure of employees' Section 7 activity. See *Laguna College of Art and Design*, above, at 965 fn. 1 (finding that the employer's interests in compelling disclosure of organizing strategy are outweighed by employees' interests in keeping their Section 7 activity confidential); see also *Veritas Health Services d/b/a Chino Valley Medical Center*, 362 NLRB 283, 283 fn. 1 (2015) (finding employer violated Section 8(a)(1) by issuing subpoena to employees seeking communications between employees and the union and documents relating to the distribution and/or solicitation of union authorization cards because it would "have a chilling effect on employees' willingness to engage in (or refrain from) protected activities"), enfd. in relevant part sub nom. *United Nurses Associations of California v. NLRB*, 871 F.3d 767 (9th Cir. 2017);[2] *National Telephone Directory Corp.*, 319 NLRB 420, 421 (1995) (noting that the confidentiality interests of employees regarding their Section 7 activity "have long been an overriding concern to the Board").

My colleagues nonetheless conclude that the Regional Director abused her discretion by affirming the Hearing Officer, who neither suggested to the parties that the Employer's subpoena should be narrowed to seek only documents referring or relating to whether the employees at issue intended to return to their struck positions after the election nor reviewed in camera documents responsive to this narrowed request. In support of this extraordinary holding that the Hearing Officer should have sua sponte rewritten the Employer's subpoena into something more palatable, my colleagues purport to rely on the Guide for Hearing Officers in NLRB Representation and Section 10(k) Proceedings. However, as my colleagues concede, the provisions of the Guide for Hearing Officers are not binding procedural rules. Indeed, no Board precedent has ever held that a hearing officer abuses her discretion by declining to follow them. Moreover, contrary to my colleagues' suggestion, the Guide does not prescribe a bright-line requirement to narrow the scope of an overbroad subpoena and conduct an in-camera review whenever a hearing officer faces a contention that a subpoena seeks materials that are irrelevant, privileged, or otherwise exempt from production. It merely states that "the hearing officer *should consider* conducting an in camera inspection . . . [and] *should also look for* areas of compromise, e.g., redaction of certain information or narrowing the scope of the subpoena, in order to satisfy the subpoenaing party and allow the hearing to proceed." Id. (emphasis added). Consistent with this, the Board has affirmed the hearing officer's decision to revoke an overly broad subpoena without conducting any in-camera inspection. See *Ozark Automotive Distributors, Inc. d/b/a O'Reilly Auto Parts*, Case 21–RC–021222, 2011 WL 1210976 (Mar. 31, 2011).[3] In sum, the Guide encourages a Hearing Officer to modify the scope of a subpoena and conduct an in-camera review in appropriate circumstances.

[1] On March 15, 2023, the parties entered into an informal settlement agreement to settle the Union's charges against the Employer alleging numerous violations of Sec. 8(a)(1) in connection with the Union's ongoing organizing campaign. That same date, the parties also entered into a stipulation setting aside the election and agreeing to hold a new election. The Regional Director approved both agreements on March 17, 2023, and conducted a manual election on July 25, 2023.

[2] In attempting to distinguish *Chino Valley Medical Center*, my colleagues point out that the employer in that case issued subpoenas directly to *employees*. But that distinction matters only in cases where the employer's conduct could itself violate Sec. 8(a)(1) by interfering with employees' free exercise of their Sec. 7 rights. Here, the Hearing Officer and the Regional Director cited *Chino Valley Medical Center* to underscore the undisputed point that the communications between employees and union implicate substantial Sec. 7 interests.

[3] My colleagues also rely on the court's denial of enforcement in a subsequent test-of-certification proceeding in *O'Reilly Auto Parts*. However, the Board's decision in *O'Reilly* remains the governing precedent, and in any event, the principles set out by the court are not transgressed here. The court faulted the Board for failing to carefully balance the employees' protected Sec. 7 rights against the employer's articulated need for the requested documents. The court noted that the company sought, among other things, the dates and times of calls between an alleged union agent and the union, and between that agent and employees. *Ozark Automotive Distributors, Inc. v. NLRB*, 779 F.3d 576, 581 (D.C. Cir. 2015). The court explained that the extent and frequency of such contacts were relevant to the question of whether certain employees had apparent authority to act for the union, and critically, these requests did not implicate any employee's confidentiality interests. Id. at 580–582, 584. By contrast, here, the Hearing Officer (and the Regional Director) already conducted the very balancing the court found lacking in *O'Reilly*.

This case does not present such circumstances. Here, the Employer seeks the Board's endorsement of a classic, blanket subpoena and unwarranted fishing expedition into the Union's internal communications with an employee-organizer and a union supporter.[4] See *Burns Security Services*, above, at 566; *Cherokee Marine Terminal*, 287 NLRB 1080, 1098 (1988) (granting the General Counsel's motion to quash overbroad subpoena because the employer sought the entire investigative file, without limiting its request to those portions of the investigative file which shed light on this issue, nor to material which is not privileged); see also *Drukker Communications, Inc. v. NLRB*, 700 F.2d 727, 732 (D.C. Cir. 1983) (stating that "more generalized 'fishing expeditions' for helpful evidence . . . have uniformly been rejected").[5]

Apparently recognizing the breadth of the Employer's subpoena, my colleagues narrow—on their own initiative—the scope of these overbroad requests seeking all communications concerning the employees' "activities" at the Employer over a two-year period to only "those that refer or relate to whether the employees at issue intended to return to their struck positions after the election." They then order in camera inspection of any documents responsive to this new narrowed Board-defined subpoena request. But it is surely not the Board's job—any more than it is the Hearing Officer's—to make litigation decisions for parties by unilaterally whittling a blanket subpoena that flagrantly intrudes on Section 7 activity into a more appropriate inquiry and then ordering the Hearing Officer to undertake an in-camera review of that Board-limited cache of documents.

Further, even accepting the majority's narrowed scope, the Employer still has not met a threshold showing required for in-camera inspection. Because delving into the Union's records of its communications with its employee-organizers' records poses an obvious intrusion into protected Section 7 activity, the Board should permit it only upon a threshold showing that the request rests on something more than conjecture or hope that a review of the union documents will turn up something helpful to the employer's case. Here, the Employer advanced nothing more than speculation to justify compelling the Union to produce its internal communications with its employee-organizers.[6] The Hearing Officer—after hearing sworn testimony and assessing credibility—found no basis to believe that the Union possessed additional documents bearing on whether the employees intended to quit. That finding defeats the predicate for in-camera inspection under any standard. See NLRB Bench Book: An NLRB Trial Manual § 8-520, In Camera Inspections ("If the moving party shows an adequate factual basis to support a good-faith belief that in camera inspection may reveal evidence that is not protected by the privilege, the judge has discretion to order that the evidence be presented for such inspection, considering the amount of material to be reviewed, the material's relevance, and the likelihood that an inspection will reveal whether the documents are privileged."); cf. *NLRB v. Interbake Foods, LLC*, 637 F.3d

[4] My colleagues stress that the Employer stated at the hearing that it "was happy to have [a] conversation" about narrowing the terms of its subpoena, but the Employer never undertook to do so, much less made any specific proposal to limit the scope of its overbroad subpoena, leading to the Hearing Officer's ruling sustaining the petition to revoke Requests Nos. 4 and 5 "to the extent it broadly seeks communications which may include Section 7 activities, union activities." Similarly, the Employer's request for review does not argue that the Employer was (or is) willing to narrow the subpoena requests, or argue that the Hearing Officer or Regional Director erred in failing to do so. Rather, it contends that the Regional Director erred by affirming the revocation of its Requests Nos. 4 and 5. It is not for the Hearing Officer, the Regional Director, nor my colleagues, to litigate the Employer's case.

[5] I observe that in an analogous context, presented in *U.S. v. Zolin*, 491 U.S. 554 (1989), the Supreme Court considered the threshold showing that a party must meet in order to trigger a district court's discretion to order in camera review of documents otherwise privileged from disclosure by the attorney-client privilege where the party seeking in camera review asserted that the documents qualify for an exception to the privilege. The Court recognized that a "blanket rule" routinely permitting in camera review as a tool would place the privilege at "undue risk," raise "possible due process implications," and burden "district courts, which may well be required to evaluate large evidentiary records without open adversarial guidance by the parties." Id. at 571. Thus, the Court held that "[t]here is no reason to permit opponents of the privilege to engage in groundless fishing expeditions, with the district courts as their unwitting (and perhaps unwilling) agents" and ruled that "[b]efore engaging in in camera review . . . the judge should require a showing of a factual basis adequate to support a good faith belief by a reasonable person that in camera review of the materials may reveal evidence to establish the claim that the [exception to the privilege] applies." Id. at 571–573.

[6] Arguing to the contrary, my colleagues note that Foux obtained higher pay and better insurance at his current job secured through the Union and that Medrano was a paid unit salt. Yet, as the Hearing Officer found—and Board precedent confirms—these circumstances do not meet the Employer's burden to show that either employee abandoned their interest in the struck job. See *Akron Engraving Co.*, 170 NLRB 232, 234 (1968) (no presumption rebutted despite interim jobs with higher pay and better benefits where employees testified to their intent to return to work and maintained their homes in the area); see also *Dee Knitting Mills*, 214 NLRB 1041, 1041 (1974) (no evidence that a paid union salt's sole purpose was to organize employees where he worked for the employer for 3 months, performed the same work as other employees, and was never told that the employment was temporary or for a fixed duration). Nonetheless, my colleagues rely on these facts to justify an in-camera review of organizing and other sensitive protected information. Their reasoning simply underscores the strained nature of the result.

My colleagues further assert that "a lesser showing" is sufficient to justify a subpoena. But even accepting that premise, it does not aid the Employer here. As discussed above, the Employer offered only bare speculation to support its claim that the Union possessed any documents bearing on the employees' intentions regarding the struck jobs. A "lesser showing" does not mean *no* showing at all.

492, 502 (4th Cir. 2011) (requiring "a factual basis sufficient to support a reasonable, good faith belief" that in-camera inspection may reveal unprivileged information) (quoting *In re Grand Jury Investigation,* 974 F.2d 1068, 1074 (9th Cir.1992)). By effectively permitting in-camera review "on demand" based solely on speculation, the majority invites—indeed, encourages—employers to issue blanket subpoenas broadly covering Section 7 activities and then task Hearing Officers with rewriting such subpoenas and conducting in-camera inspection on the mere chance that something arguably useful to the employer may be discovered. The result will be unnecessary delays in representation proceedings, substantial administrative burdens, and an erosion of the confidentiality essential to Section 7 activity. Furthermore, it will undermine the credibility of the Board as an adjudicator of representation disputes by "permit[ting] opponents of [Section 7 confidentiality] to engage in groundless fishing expeditions with the [Board's Hearing Officers and Administrative Law Judges] as their unwitting (and perhaps unwilling) agents" in the outside hope that something in the union's files can aid their case. *Zolin*, above, at 571. This is something that our precedent has refused to sanction. See *Burns Security Services*, above.

This is a step backward for the Board, for workers, for unions, and for the delicate balance of labor-management relations that the NLRA was enacted to protect. For these reasons, I respectfully dissent from my colleagues' decision to grant review and remand the case with instructions to conduct an in-camera review of documents responsive to the Board's narrowed revision of the Employer's Subpoena Requests Nos. 4 and 5.

Dated, Washington, D.C. September 4, 2026

David M. Prouty , Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

CORRECTED DECISION AND ORDER ON CHALLENGED BALLOTS

* * * *

Subpoena Requests Nos. 4 and 5

Subpoena Request No. 4 sought "An original or true copy of all communications and records, including but not limited to e-mails, letters, memoranda, or notes, between Local 455, including any affiliate organization, and/or Andrew (or Andy) Medrano regarding or relating to Mr. Medrano's activities at John Henry Foster Minnesota, Inc. from January 1, 2022, through February 27, 2024." Subpoena Request No. 5 sought the same information for "Michael (or Mike) Foux."[1] After the Petitioner objected that these requests sought information regarding employees' protected concerted activities, the hearing officer revoked the requests to the extent that the information sought was not relevant or material to the issues and was not warranted.

The Employer argues that based on Medrano's testimony at the hearing, the Union and MPTA possess documents that are responsive to its requests. Medrano testified that he writes a monthly report to his lead at the Union. The Employer speculates that these monthly reports would likely have included information regarding Foux's work status, his intentions regarding the apprenticeship program, his plans after the election and Medrano's plans after the election. It asserts that neither the Union nor MPTA produced the reports or offered them for inspection, and that the hearing officer did not review any documents responsive to the subpoena request before ruling.

Subpoena Requests Nos. 4 and 5 seek documents that may disclose employees' Section 7 activities. The hearing officer properly relied on *Veritas Health Services*, 362 NLRB 283 (2015), to conclude that the protection of employees' Section 7 rights outweighs the Employer's need for the requested information. Her revocation of the Employer's subpoena requests did not significantly prejudice the Employer in the presentation of its case. The Employer has not demonstrated that it was hindered in obtaining evidence through other means that would not interfere with Section 7 protections. For instance, there is no indication on the record that the Employer availed itself of the opportunity to subpoena Foux's current employer to obtain information regarding his anticipated tenure at that company. Further, the Employer was given sufficient opportunity at the hearing to question Foux and Medrano about relevant matters.[2] This is particularly true with Foux, who was subpoenaed and questioned on direct examination by the Employer. Accordingly, the hearing officer appropriately concluded that when weighed against the Employer's speculation as to the information that documents could contain, the protection of employees' Section 7 rights prevailed.

[1] The subpoenas seek information relating to "Michael (or Mike) Foux," not Matthew Foux, whose eligibility is being contested in this proceeding.

[2] The Employer apparently did not subpoena documents from Foux or Medrano.