

NLRB Upholds Subpoena Of Employer's Employee Handbook

January 6, 2015 | [National Labor Relations Board, Labor And Employment](#)

On the last day of 2014, a three-member panel of the National Labor Relations Board (the Board or NLRB) denied a Massachusetts-based waste-services provider's request to revoke a document subpoena issued by the Regional Director of Region 1 of the NLRB. By the subpoena, Region 1 sought the "Employee Handbook" of the employer. In seeking to revoke the subpoena, the employer argued that Region 1 was investigating two charges, neither of which alleged "a violation based on language contained in the employee handbook." Nevertheless, the NLRB Panel majority found that "the request for the Employee Handbook bears some potential relevance to the pending allegations," and that the potential relevance warranted the denial of the petition to revoke. However, the panel majority, made up of Republican Board Members Miscimarra and Johnson, specifically cautioned that had the "Region invoked our subpoena power to obtain employee handbooks or policy statements for the purpose of initiating or expanding charges or investigations, this would be an 'improper purpose' that would warrant revocation of the subpoena." The third member of the panel, Member Hirozawa (a Democrat) chose not to address his "colleagues' views on the limits of that power or their discussion of whether the subpoena would be proper in the hypothetical situation they describe." Thus, while the panel majority's decision seems to provide some good news for employers, the fact that the full Board is currently made up of a majority of Democratic Board members, does not bode well for employers seeking to challenge the Board's subpoena authority.

RELATED PRACTICE AREAS

Labor and Employment

Labor Relations

National Labor Relations Board (NLRB)