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**Starbucks Corporation and Workers United, affiliated with Service Employees International Union.**  
Cases 01-CA-302321 and 01-CA-307585

September 29, 2023

ORDER

BY CHAIRMAN McFERRAN AND MEMBERS KAPLAN  
AND PROUTY

On May 5, 2023, Administrative Law Judge Kimberly Sorg-Graves issued an order denying, in large part, the Respondent's petitions to revoke subpoenas duces tecum B-1-1ID2IE5 and B-1-1IGZVA5 and subpoena ad testificandum A-1-1IISKD. The judge ruled, as relevant here, that (1) the Respondent should produce its "Petition Store Playbook" or have its custodian(s) of records available to testify concerning the Respondent's search for responsive documents; (2) if the Respondent elects to produce any additional documents in TIFF+ format,<sup>1</sup> it must do so at least 4 business days before the hearing resumes; and (3) the General Counsel properly served subpoena ad testificandum A-1-1IISKD. The Respondent has requested special permission to appeal each of those rulings.

We grant the Respondent's request for special permission to appeal but deny the appeal on the merits. We find that the Respondent has failed to establish that the judge's well-supported rulings constitute an abuse of discretion.

We also take this opportunity to address in greater detail the judge's ruling pertaining to the production of Electronically Searchable Information (ESI). The Respondent contends that the judge erred in ordering production of TIFF+ files 4 days prior to the hearing resumption date because the General Counsel is not entitled to pretrial discovery. In response, the General Counsel states that the Respondent produced its ESI on the morning of the hearing in unusable form. Specifically, the General Counsel notes that, in advance of the hearing, it informed the Respondent that the NLRB's Relativity vendor is unable to process ESI provided in TIFF+ format in fewer than 2 or 3 days. Thus, the General Counsel explains that for ESI in TIFF+ format to be available for use on the day of the hearing it must be provided in advance. The Respondent has proffered no evidence or argument suggesting that the General Coun-

<sup>1</sup> TIFF+ format consists of page-level image files and document-level extracted text files for each document, accompanied by a load file containing metadata. To search a TIFF+ production and view the metadata attached to the electronic document, it is necessary to merge these files in a separate program.

sel's assertions about the agency's technological capabilities are inaccurate or made in bad faith.

The judge has broad discretion to "[r]ule upon petitions to revoke subpoenas," 29 C.F.R. § 102.35(a)(3), to "[r]egulate the course of the hearing," *id.* § 102.35(a)(6), and to "[d]ispose of procedural requests," *id.* § 102.35(a)(8). We find that it is within the judge's broad discretion, granted by the Board's Rules and Regulations, to require the Respondent's subpoena responses to be at a time and in a format that is reasonably usable by the start of the hearing or, as in this instance, by the resumption of the hearing. Accordingly, we conclude that the judge did not abuse her discretion in requiring that documents produced in TIFF+ format be produced a reasonable number of business days (here, 4) before the hearing resumption date.

Contrary to the Respondent's claim, the judge's ruling does not require the Respondent to engage in pretrial discovery.<sup>2</sup> As the General Counsel has credibly explained, documents produced in the TIFF+ format (the Respondent's apparent preference) are not reasonably usable until they are processed through a third-party vendor.

Of course, it is well within the judge's discretion, *sua sponte* or on request, to issue an order limiting the General Counsel's access to the documents should they be made available before the start of the hearing.<sup>3</sup>

Thus, the Respondent is directed to produce the requested information and, if the Respondent asserts that the documents do not exist, to have its custodian(s) of records testify,<sup>4</sup> and to make Store Manager Renee Colburn available to testify, as ordered by the judge.

Dated, Washington, D.C. September 29, 2023

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Lauren McFerran, Chairman

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Marvin E. Kaplan, Member

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David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup> Although the Board does not typically have pretrial discovery, parties are always welcome to agree to an earlier return date for subpoenas duces tecum.

<sup>3</sup> The Board has interpreted the administrative law judge's order here as requiring the Respondent to provide the documents' underlying metadata to the General Counsel when the Respondent provides responsive documents.

<sup>4</sup> If, as the Respondent contends, there is more than one custodian of records, the Respondent should produce those individuals who have performed the searches for the requested documents to testify.