

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

DYNAMIC ENERGY, INC., A JOINT AND/OR
SINGLE EMPLOYER WITH M&P SERVICES, INC.

and

Case 9-CA-45772

UNITED MINE WORKERS OF AMERICA, AFL-CIO

MEMORANDUM IN OPPOSITION TO
THE EMPLOYERS' PETITION TO REVOKE
SUBPOENA DUCES TECUM

This memorandum sets forth Counsel for the Acting General Counsel's position in regard to the Petition to Revoke Subpoena Duces Tecum No. B-5695556, herein called the petition, filed on August 30, 2010, by Dynamic Energy, Inc. and M&P Services, Inc., collectively referred to as the Employers. (A copy of the subpoena is attached hereto as Exhibit 1 and a copy of the petition is attached as Exhibit 2.) The Regional Director of Region 9 served such subpoena on the Employers for the purpose of gathering information relevant to his investigation of the unfair labor practice charge in the above-styled case consistent with the authority granted to him by Section 11 of the Act. (The charge in Case 9-CA-45772 is attached hereto as Exhibit 3.) The Employers have failed to advance any basis sufficient in law for revoking the subpoena. Counsel for the Acting General Counsel opposes the Employers' petition and, for the reasons set forth below, respectfully submits that such petition should be denied. Counsel will address the Employers' arguments by referring to the numbered paragraphs in the petition.

Section 11(1) of the Act provides, in relevant part that: "The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of

examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question.” The unfair labor practice charge alleges that the Employers coercively interrogated and threatened employees in violation of Section 8(a)(1) of the Act and discharged certain named employees in violation of Section 8(a)(3) of the Act. Following the filing of the charges, the Regional Director commenced his investigation. As set forth in detail below, the materials sought by the Regional Director’s subpoena duces tecum are relevant to his investigation of the instant unfair labor practice charge.

In paragraphs 2 and 3 of the petition, the Employers ostensibly object to the entire subpoena as being unduly burdensome and far exceeding that which is reasonably necessary to investigate the alleged unfair labor practices. In advancing such arguments, the Employers neither cite to any specific parts of the subpoena nor explain how compliance with the subpoena will unduly burden the Employers. However, as here, whenever evidence cannot be obtained by reasonable voluntary means in an investigation of unfair labor practices, a Regional Director has full discretion to subpoena evidence that would materially aid in the determination of whether complaint should issue. *NLRB v. North Bay Plumbing, Inc.*, 102 F. 3d 507, 511-512 (4th Cir. 1996). The Courts have interpreted Section 11 of the Act broadly to permit the Board “to obtain everything it [could seek] from an order compelling discovery” under the Federal Rules of Civil Procedure. *NLRB v. Interstate Material Corp.*, 930 F.2d 4, 6 (7th Cir. 1991). Moreover, the fact that a subpoena seeks voluminous documents does not, standing alone, establish that it is burdensome. See, *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 513-514 (4th Cir. 1996).

On June 4 and July 22, 2010, through written correspondence from various Board Agents, the Regional Director requested documents bearing on both the single employer and

supervisory issues.^{1/} The Employers failed to comply with such requests. Moreover, they have neither denied nor admitted whether Dynamic Energy and M&P Services are joint employers. Therefore, the Regional Director issued the subpoena herein bearing on issues raised in the investigation of the unfair labor practice charge and necessary to making a determination on whether the Employers are joint or single employers and whether Tracey Steele is a supervisor within the meaning of Section 2(11) of the Act. The documents sought in items 1 through 30 are particularly relevant to the inquiry into the Employers' alleged single employer status in that they relate to evidence of common ownership, management and financial control, interrelation of operations and centralized control of labor relations. See, e.g., *Essex Valley Visiting Nurses Association*, 352 NLRB 427, 429 (2008). The documents pertaining to Mechel Bluestone, Inc. ("Mechel") and Justice Highwall Mining, Inc. ("Justice") are also relevant to this inquiry in light of evidence indicating that Mechel is the parent company of the Employers and Justice, and that Justice is present and involved in the work occurring at the work site at issue in the investigation. Items 31 through 34 seek documents to determine the existence, if any, of supervisory indicia possessed by Steele. The merits of several allegations raised in the unfair labor practice charge may ultimately turn on whether Steele is a statutory supervisor.

In paragraph 4 of the petition, the Employers argue that they have already produced documents relevant to the issue of single/joint employer status and that it is unreasonable to expect the Employers to search for additional records and travel to Cincinnati to supply such documents. As pointed out above, the Regional Director has determined that the evidence thus far provided by the Employers is incomplete and insufficient to determine their status as single employer. Moreover, the purported burden imposed on the Employers by having to travel to

^{1/} The initial request was made during the investigation of Cases 9-CA-45536 and 9-CA-45678, which were identical in substance to the charge herein, with the exception that Dynamic Energy, Inc. was not yet named as a joint employer with M&P Services, Inc.

Cincinnati, Ohio is not grounds for revoking the subpoena. However, if the Employers wish to comply with the subpoena by making the requested documents available at their facilities, an Agent of the Regional Director would, at the Employers' request, be willing to travel to their facility or facilities to review such documents. Further, in a letter to Respondent's counsel, Respondent was given the option of submitting the subpoenaed documents in electronic format, so long as the documents were received in a format accessible to the Agency. (A copy of the letter is attached hereto as Exhibit 4.)

In paragraph 5, the Employers are presumably attacking items 8 through 11 of the subpoena as being outside the material time frame of the subpoena and the unfair labor practice charges. The corporate filings and applications sought in 8 through 11 are necessary for examining the relationship between the Employers and their parent company, Mechel. Counsel maintains that such documents are relevant and producible; however, it realizes that the request for all such filings may extend back many years. Counsel is therefore willing to limit the period of its request in items 8 through 11 to the past 5 years.

In regard to paragraph 6, the Employers have failed to provide any basis, legal or otherwise, to support its claim that the subpoena directions vaguely define "persons," "companies," and "documents deemed to be in the possession of. . ." the Employers.

In paragraph 7, the Employers oppose the requests in items 14 through 18, 21, 23, 25, 27 and 28 as unreasonable, unduly burdensome and of questionable relevance, without proffering any explanation or support for such assertions. It is the burden of the party subpoenaed to show a reason why the Board's subpoena should not be enforced. *NLRB v. Dutch Boy, Inc.*, 606 F. 2d 929, 933 (10th Cir. 1979). The Employers failed to meet such burden. In any event, the documents requested in items 14 through 18 relate directly to the Employers' purportedly lawful

reason for laying off the alleged discriminatees. The documents requested in items 21, 23, 25, 27 and 28 all relate to the criteria the Board uses to determine the existence of a single employer.

The subpoena herein plainly requests documents that would materially aid the Regional Director in determining whether a complaint should issue and the Employers have failed to meet their burden of showing why such subpoena should not be enforced.

Based on the foregoing, Counsel for the Acting General Counsel respectfully requests that the Employers' petition to revoke be denied.

Dated at Cincinnati, Ohio this 7th day of September 2010.



Naima R. Clarke
Counsel for the Acting General Counsel
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Attachments

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Thomas Lusk, COO or Custodian of Records
Dynamic Energy, Inc. a joint and/or single employer with M&P Services, Inc.
818 North Eisenhower Drive
Beckley, WV 25801
As requested by Anne J. Rogge, Board Agent

whose address is 3003 John W. Peck Fed. Bldg., 550 Main St., Cincinnati, OH 45202-3271
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an agent of the Regional Director

_____ of the National Labor Relations Board

at 3003 John W. Peck Fed. Bldg., 550 Main St.

in the City of Cincinnati, Ohio

on the 3rd day of September 20 2010 at 10 (a.m.) (~~pm~~) or any adjourned

or rescheduled date to testify in Dynamic Energy, Inc. a joint and/or single employer with M&P Services, Inc.
Case 9-CA-4572

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B - 569556

Issued at Cincinnati, OH

this 20th day of August 2010



Lesfer A. Neltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

8513

RETURN OF SERVICE

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

- by person
- by certified mail
- by registered mail
- by telegraph
- by leaving copy at principal office or place of business at:

(Check method used.)

on the named person on _____

//

(Month, day, and year)

(Name of person making service)

(Official title, if any)

CERTIFICATION OF ATTENDANCE

I certify that named person was in attendance as a witness at _____

on _____ direc

(Month, day or days, and year)

(Name of person certifying)

(Official title)

Re: DYNAMIC ENERGY INC., A JOINT EMPLOYER
AND/OR SINGLE EMPLOYER WITH M&P SERVICES, INC.
Case 9-CA-45772

Definitions And Instructions

1. As used herein, the term “document” means any written, recorded or graphic matter, or matter existing on computer software or hardware, whether previously erased or not, including but not limited to memoranda, notes, minutes, business records, telephone contacts, correspondence, telegrams, diaries, bookkeeping entries, receipts, work orders, contracts, financial statements, tax returns, checks, check stubs, reports, records, summaries, lists, charts, compilations, graphs, videotapes, statements, notebooks, handwritten notes, applications, agreements, files, addenda, books, pamphlets, periodicals, appointment calendars, recordings of oral conversations, voice mail messages and electronic mail.
2. “Employer(s)” refers to Dynamic Energy, Inc., (herein called Dynamic) and M&P Services, Inc., (herein called M&P), its officers, employees, agents, representatives, accountants, attorneys, trustees, successors and assigns, and the officers, employees, agents, representatives, accountants, attorneys, trustees, successors and assigns of any entity that it owns, controls or manages.
3. “Facility” means Employers' office and place of business located in Coal Mountain, West Virginia.
4. Employee(s) includes all permanent employees employed by M&P and Dynamic at its Coal Mountain, West Virginia location *and* also includes all employees through any outside contractor.
5. “Any,” “each,” and “all” shall be read to be all inclusive and to require the production of each and every document responsive to the request in which such terms appear.
6. “And” and “or” and any other conjunction or disjunction used herein shall be read both conjunctively and disjunctively, so as to make the request inclusive rather than exclusive, and to require the enumeration of all information responsive to all or any part of each request in which any conjunction or disjunction appears.
7. Whenever used herein, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense and vice versa; the masculine shall be deemed to include the feminine and vice versa.
8. The term “person” means any natural person, corporation, partnership, proprietorship, association, organization, trust, joint venture, or group of natural persons or other organizations.

9. The terms “copy” or “copies” shall refer to exact and complete copies of original documents.
10. Copies may be produced in lieu of originals, provided that such copies are exact and complete copies of original documents and that the original documents be made available at the time of production for the purposes of verifying the accuracy of such copies. Any copies of original documents, which are different in any way from the original, whether by interlineations, receipt, stamp, notations, indication of copies sent or received, or otherwise, shall themselves be considered original, documents and must be produced separately from the originals or copies of originals.
11. Documents subpoenaed shall include all documents in the Employers' physical possession, custody or control, and/or the physical possession, custody or control of the Employers' present and/or former supervisors, agents, attorneys, accountants, advisors, investigators, and any other persons and companies directly or indirectly employed by, or connected with the Employers.
12. This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
13. If any document responsive to any request herein was withheld from production on the asserted ground that it is privileged, identify and describe:
 - the author;
 - the recipient;
 - the date of the original document;
 - the subject matter of the document.
14. If any document responsive to any request herein was, but no longer is, in the Employers' possession, custody or control, identify the document (stating its date, author, subject, recipients and intended recipients); explain the circumstances by which the document ceased to be in the Employers' possession, custody or control, and identify (stating the person's name, employer title, business address and telephone number, and home address and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody or control.
15. If any document responsive to any request herein was destroyed, discarded, or otherwise disposed of for whatever reasons, identify the document (stating its date, author, addressee(s), receipts and intended recipients, title and subject matter); explain the circumstances surrounding the destruction, discarding or disposal of the documents, including the timing of the destruction, discarding or disposal of the document, and identify all persons known or believed to have the document or a copy thereof in their possession, custody or control.

16. All documents produced pursuant to this subpoena should be organized by the subpoena paragraph that each document or set of documents is responsive to, and labels referring to that subpoena paragraph should be affixed to each document or set of documents.
17. For any document requested in this subpoena, if the document uses a code, then all documents explaining the codes used in the document are subject to this subpoena.
18. This request is continuing in character and if additional responsive documents come to the Employers' attention following the date of production, such documents must be promptly produced.
19. The relevant time period for this subpoena, unless stated otherwise, is **January 1, 2010 to the present**.

MATERIAL TO BE PRODUCED

1. Documents showing all employees hired/placed to work at M&P's facility showing the employee's name, job title, skill level, hire/start date, all job/assignment(s) worked, job description and duties, clock number, termination or quit date, work schedule(s) and all hours worked each week, and showing which employment agency working through if any, since September 12, 2009 to the present.
2. Documents showing the organizational structure and managerial/supervisory hierarchy of M&P including the name of the manager/supervisor, job title, job description and entity by whom employed.
3. Documents showing the organizational structure and managerial/supervisory hierarchy of Dynamic, including the manager/supervisor's name, job title, job description and entity by whom employed.
4. Documents showing the managerial and supervisory hierarchy of Mechel Bluestone, Inc. (Mechel) or any other entity with financial or ownership interest in the Employers, including the manager/supervisor's name, job title and job description.
5. Documents showing all individuals or entities with an ownership interest in M&P, including the nature and amount of that ownership interest.
6. Documents showing all individuals or entities with an ownership or interest in Dynamic, including the nature and amount of that ownership interest.
7. Documents showing the identity of the Board of Directors and officers of:
 - a. Dynamic,
 - b. M&P and

- c. Mechel and any other entity that has financial and ownership interest in Dynamic or M&P
8. All agreements and other documents showing:
 - a. all financial obligations owed to Dynamic by M&P or to M&P by Dynamic, including the type of the obligation, the amount owed, the interest to be paid, securities required and all documents showing the status of the financial obligation, the amount paid, the interest paid, the date paid, and
 - b. all services including any shipping, production and maintenance that Dynamic provided to M&P and that M&P provided to Dynamic showing the dates services and assistance provided.
9. All corporate filings and applications for license that Dynamic has ever made with any Federal, State, County or local government.
10. All corporate filings and applications for license that M&P has ever made with any Federal, State, county or local government.
11. All corporate filings and applications for license that Mechel has ever made with any Federal, State, county or local government.
12. All handbooks and other documents showing all rules, regulations and policies for all M&P and Dynamic employees and showing the effective dates of the handbooks, rules, regulations and policies.
13. Documents and disciplinary records showing all persons (name, job title and by whom employed), who made or participated in any decisions to discipline, terminate, layoff, hire or recall:
 - a. All supervisory and nonsupervisory employees of M&P from September 12, 2009 to the present, and;
 - b. All supervisory and nonsupervisory employees of Dynamic from September 12, 2009 to the present.
14. Documents showing all hours worked by any employee of Dynamic, Justice Highwall Mining, Inc., or any other subsidiary of Mechel, who performed any work previously performed by the employees of M&P prior to their March 12, 2010 termination.
15. Documents showing all overtime hours worked by any employee of Dynamic, Justice Highwall Mining, Inc., or any other subsidiary of Mechel, who performed any work previously performed by the employees of M&P prior to their March 12, 2010 termination.

16. Documents showing the names, job classifications and pay rate of any employee referenced in Items 14 and 15 above.
17. Documents showing the name and contact information of any outside contractor who provided individuals to perform any work previously performed by the employees of M&P prior to their March 12, 2010 termination.
18. All invoices and other documents showing the amount of hours, regular and overtime, worked each week by any individual provided by any outside contractor referenced in Item 17 above.
19. All internal documents and other communications by or between any persons employed by Dynamic, M&P, Mechel or Bluestone Coal regarding cutbacks and possible layoffs at the Coal Mountain jobsite.
20. Documents showing, from September 12, 2009 to the present, all equipment shared by M&P and Dynamic showing the names and types of equipment, including all equipment used at the Employers' facility by both M&P and Dynamic employees at any time during this period.
21. All lease agreements showing the lessor and lessee of all equipment used by M&P and/or Dynamic at the Coal Mountain, West Virginia jobsite.
22. Documents showing the identity, including the name, job title and company by whom employed, of any person who established, formulated or participated in any decision making involving terms and conditions of employment for all supervisory and non-supervisory employees employed by M&P, including:
 - a. Wage rates and salaries
 - b. Work schedule
 - c. All disciplinary policies and work rules; and
 - d. All benefits including vacation, holidays, awards, medical benefits, life insurance benefit, retirement.
23. Documents reflecting who or what entity owns all real property and equipment at the Employers' facility.
24. Documents showing the identity of any managers, supervisors or employees who have been transferred between or among M&P, Dynamic and any of its parent companies (or other entity which has a financial or ownership interest in the Employers), or who have been employed by more than one entity during the last 3 years including the documents showing the manager/supervisor/employee's name, job title(s), and company transferred to and from and approximate dates employed at each.
25. All financial statements, budgets, and audits of (a) M&P (b) Dynamic (c) Mechel, or any entity with a financial or ownership interest in the Employers and showing who (name,

job title and company) was responsible for creating or establishing the budgets/statements/audits.

26. Documents showing the names, job titles or classifications, work shift and pay rates and the entity by whom they are employed of any individual hired since March 12, 2010.
27. Documents showing, from September 12, 2009 to the present, the name of all individuals and companies employed or retained by, or for, M&P, to perform legal services, trucking services, food services, janitorial services, advertising services, accounting services, payroll services, training services, IT services, and delivery services and showing which entity pays for each service.
28. Documents showing, from September 12, 2009 to the present, the name of all individuals and companies employed or retained by, or for, Dynamic to perform legal services, trucking services, food services, janitorial services, IT services, advertising services, accounting services, payroll services, training services, and delivery services and showing which entity pays for each service.
29. The personnel files and other documents showing the job title, description, salary or rate of pay, person who (name and company) determined the salary/pay and which entity pays the salary/pay of the following persons: William "Billy Bob" Marcum, Tracy Steele and Eddie Miller, Barry Barnett and Brandon Mahon.
30. Documents showing to whom (name, job title, company) the above-named persons in paragraph 29 report and all persons (name, job title and company) who they oversee.
31. All personnel documents, including but not limited to warning notices, pay adjustments, recommendations for pay increases, time cards, recommendations for hire or discipline signed or initialed by Tracy Steele.
32. Any documents showing any involvement of Tracy Steele in the assignment of work, evaluations of employees, discipline of employees, recommendations for pay increases for employees, or the hire of any individual.
33. Job description(s) for Tracy Steele for the period September 12, 2009 to the present.
34. Records showing specific tasks performed by Tracy Steel and hours spent on each task for each payroll period from September 12, 2009 to the present.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

THOMAS LUSK
COO OR Custodian of Funds
DYNAMIC ENERGY INC
M + P Services

CA-45772

2. Article Number

(Transfer from service label)

7008 2810 0000 7316 0513

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature *Janey Adkins* Agent Addressee

B. Received by (Printed Name) *Janey Adkins* C. Date of Delivery *8.23.10*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

200 AUG 25 PM 101

National Labor Relations Board, Region 9
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, OH 45202-3271



**NATIONAL LABOR RELATIONS BOARD
NINTH REGION**

Dynamic Energy, Inc., a Joint and/or Single Employer with M & P Services, Inc.)	
)	
and)	Case No. 9-CA-45772
)	
United Mine Workers of America, AFL-CIO)	

PETITION TO REVOKE SUBPOENA DUCES TECUM

Dynamic Energy, Inc., and M&P Services, Inc., pursuant to the Board’s Rules, each hereby petitions to revoke subpoena duces tecum B-569556 served on August 23, 2010, and as grounds for same states:

1. The Charge herein, 9-CA-45772, was filed on June 23, 2010, and alleges an unfair labor practice occurring in early February and on March 12, 2010.
2. The documents sought by the subpoena far exceed any documents reasonably necessary to investigate these alleged unfair labor practices. In addition, production of the subpoenaed documents would be unduly burdensome on these respondents.
3. The subpoena improperly seeks “all” documents in over 34 enumerated categories, very few of which bear directly or indirectly on the question whether the alleged unfair labor practices in fact occurred. Although the Charge alleges that the employers herein are single or joint employers, the documents sought in the subpoena are broader than necessary to investigate those allegations. For example, the subpoena seeks information regarding Mechel Bluestone, Inc. and

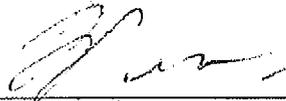
Justice Highwall Mining, Inc., neither of which is mentioned or implicated in the Charge. Indeed, a separate charge alleging that Justice Highwall is a joint or single employer with Dynamic was recently withdrawn by the Charging Party.

4. The Respondents have already produced documents relevant to the issue of single/joint employer status and have answered questions regarding the alleged unfair labor practices. Many of the demands made in the subpoena are duplicative or entirely new. It is unreasonable to expect the subpoenaed party to search and send a representative to Cincinnati to supply documents in what appears in many respects to be an on-again, off-again, on-again fishing expedition. The Respondents should not be at the mercy of the Union's filing, withdrawal and re-filing of varied and disparate allegations of party status.
5. Although the Definitions and Instructions to the subpoena purport to limit the time frame in which documents are sought, the subsequent listing of "material to be produced" ranges far outside those limits. For example, the subpoena seeks all corporate filings and license applications "ever made" by not only the named respondents but other entities not even named in the charge.
6. The subpoena also includes an overly broad and impermissibly vague definition of persons, companies and documents deemed to be in the possession, custody and control of the respondent companies including documents in the possession of "former supervisors" and "other persons and companies directly or indirectly employed by or connected with" the respondent companies.

7. In many other respects the sheer volume of material sought by the subpoena is unreasonable and unduly burdensome and of questionable relevance. This includes materials described in the following paragraphs of the subpoena: 14, 15, 16, 17, 18, 21, 23, 25, 27, 28.

WHEREFORE, for the reasons stated the subpoena should be revoked.

Respectfully submitted,



Bernard P. Jeweler
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
2400 N Street, N.W., Fifth Floor
Washington, DC 20037
Tel: 202-887-0855
Fax: 202-887-0866

Dated: August 30, 2010

NATIONAL LABOR RELATIONS BOARD
NINTH REGION

Dynamic Energy, Inc., a Joint and/or Single Employer
with M & P Services, Inc.

and

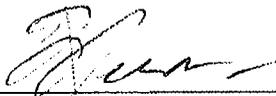
United Mine Workers of America, AFL-CIO

Case No. 9-CA-45772

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition to Revoke Subpoena Duces Tecum was served
by electronic mail to the following:

Anne J. Poppe
Board Agent
National Labor Relations Board
anne.poppe@nlrb.gov


Bernard P. Jeweler

Dated: August 30, 2010

INTERNET
FORM NLRB-501
(2-00)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE	
Case 9-CA-45772	Date Filed JUNE 23, 2010

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1 EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Dynamic Energy, Inc., a Joint and/or Single Employer with M & P Services, Inc.		b. Tel. No. 304-252-8528
d. Address (Street, city, state, and ZIP code) 818 North Eisenhower Drive Beckley, WV 25801		c. Cell No.
e. Employer Representative Tom Lusk, General Operating Mgr.		f. Fax No. 304-252-8897
i. Type of Establishment (factory, mine, wholesaler, etc.) Coal Mine		g. e-Mail
j. Identify principal product or service Coal		h. Number of workers employed 8

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

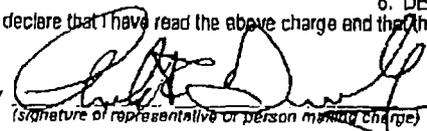
Since about early February 2010, the above-named employer coercively interrogated and threatened employees regarding their activities on behalf of the United Mine Workers, AFL-CIO.

On March 12, 2010, the above-noted employer discharged employees in retaliation for their concerted and union activities, including Jeremy Blankenship, Nathan Brown, Christopher Champagne, Phillip Coleman, Steve Paynter and Herrick Shepard.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
United Mine Workers of America, AFL-CIO

4a. Address (Street and number, city, state, and ZIP code) 1300 Kanawha Boulevard, East Charleston, WV 25301		4b. Tel. No. 304-343-0259
		4c. Cell No.
		4d. Fax No. 304-343-0250
		4e. e-Mail region2@umwa.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
International Union, United Mine Workers of America, AFL-CIO

6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No. 304-346-0341
By  Charles F. Donnelly, Attorney <small>(Signature of representative or person making charge)</small> <small>(Print name and title or office, if any)</small>		Office, if any, Cell No.
Address 1300 Kanawha Blvd., East Charleston, WV 25301		Fax No. 304-346-1188
June 23, 2010 <small>(date)</small>		e-Mail cdonnelly@umwa.org

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT
Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



United States Government

NATIONAL LABOR RELATIONS BOARD, Region 9

John Weld Peck Federal Building

550 Main Street - Room 3003

Cincinnati, Ohio 45202-3271

TELEPHONE: (513) 684-3464/3686/3687

FAX: (513) 684-3946

August 20, 2010

VIA TELEFAX

Mr. Bernard P. Jeweler
Attorney at Law
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
2400 N Street, N.W., Fifth Floor
Washington, DC 20037

Re: DYNAMIC ENERGY INC., A JOINT
EMPLOYER AND/OR SINGLE EMPLOYER
WITH M&P SERVICES, INC.
Cases 9-CA-45772

Dear Mr. Jeweler:

Please find enclosed a courtesy copy of a subpoena duces tecum which has been served on your client in connection with the investigation of the above-captioned matter. If your client wishes to provide any of the subpoenaed documents in electronic form, such documents must be received in a format accessible to the Agency.

Should you have any questions, please do not hesitate to contact me or, in my absence, Deputy Regional Attorney Deborah Jacobson.

Sincerely,

Anne J. Poppe
Field Examiner
513-684-3644

Enclosure

CERTIFICATE OF SERVICE

September 7, 2010

I hereby certify that on this date, I electronically filed the foregoing Memorandum in Opposition to the Employer's Petition to Revoke Subpoena Duces Tecum and Order Referring Employer's Petition to Revoke Subpoena Duces Tecum to the Board and served a true copy, by electronic mail, to the following:

Mr. Bernard P. Jeweler
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
2400 N Street, N.W., Fifth Floor
Washington, D.C. 20037
bernard.jeweler@odnss.com



Nailma R. Clarke
Counsel for the Acting General Counsel
Region 9, National Labor Relations Board
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