

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

GARY W. MUFFLEY, Regional Director of the
Ninth Region of the National Labor
Relations Board, For and On Behalf of the
NATIONAL LABOR RELATIONS BOARD

Applicant,

Case No. 3:13-mc-007

District Judge Walter H. Rice
Magistrate Judge Michael R. Merz

v.

JAMES R. CROTHERS,

Respondent.

**DECISION AND ORDER DENYING WITHOUT PREJUDICE
MOTION FOR AN ORDER TO SHOW CAUSE**

This case is before the Court on Application of the National Labor Relations Board (“NLRB”) for an order to Respondent James R. Crothers to show cause why he should not be compelled by court order to appear before an agent of the Regional Director of the NLRB and testify in several unfair labor practices proceedings pending before the NLRB (Application, Doc. No. 1).

The case has been referred to the undersigned United States Magistrate Judge under the Dayton General Order of Assignment and Reference as a miscellaneous civil matter involving a discovery dispute. See General Order DAY 12-03 at page 4 on the Court’s website at www.ohsd.uscourts.gov.

The Application shows that the NLRB’s inquiry is being carried on within the territorial

jurisdiction of this Court and avers that Respondent resides within that territorial jurisdiction. The Application further avers that “[s]aid subpoena ad testificandum was mailed by certified mail via the United States Postal Service to Respondent’s address. . . .” *Id.* at PageID 3. However, 29 U.S.C. § 161(4) requires that proof of service by certified mail is to be made by return post office receipt, i.e., the “green card” used by the Postal Service to obtain acknowledgment of receipt. No such proof of service has been provided to the Court.

Accordingly, the Application is DENIED without prejudice to its renewal upon proper proof of service of the subpoena on the Respondent.

May 7, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge