UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 23	
and	**Case No. 19-CB-289496**
MARK VASILKIV	

NON-PARTY PACIFIC MARITIME ASSOCIATION'S
PETITION TO REVOKE SUBPOENA *DUCES TECUM*

Pursuant to Section 103.31(b) of the National Labor Relations Board's ("NLRB's" or the "Board's") Rules and Regulations, Pacific Maritime Association ("PMA"), by and through its undersigned counsel, hereby petitions to revoke the subpoena *duces tecum* (Subpoena No. B-1-1IX2BMJ) (the "Subpoena") served by the Charging Party's representative, Jim Tessier ("Tessier"). The Subpoena is attached hereto as **Exhibit A**. Although the Subpoena is dated May 31, 2023, it was served by mail and was not received by PMA until June 5, 2023.

PMA is a multi-employer collective-bargaining agent: its primary purpose is to negotiate, enter into, and administer on behalf of its members collective-bargaining agreements with the International Longshore and Warehouse Union ("ILWU") and certain of its Longshore Division Local Unions, which represent West Coast dockworkers. PMA's members include shipping companies, stevedoring companies, marine terminal operators, and maintenance and repair companies who employ dockworkers at West Coast ports. Respondent ILWU Local 23 represents two categories of dockworkers employed by PMA members at the Port of Tacoma.

Charging Party applied to be placed on a list of dockworkers eligible to work at the Port of Tacoma and was disqualified.

PMA is not a party to this case. PMA understands that the information sought in the Subpoena—"all Tacoma JPLRC Minutes containing the grievances of the 8 individuals who were reinstated as identified in the appeal of P. Amigud in the February 18, 2021 Minutes [and] any other casuals reinstated not identified in the February 18, 2021 JPLRC Minutes"—is within the scope of the information that is at issue in the Complaint, which alleges that Local 23 unlawfully failed or refused to provide to the Charging Party information about other applicants who were disqualified.

Non-party PMA should not be compelled to produce information that is also in the possession of a party, Respondent Local 23. Further, non-party PMA should not be compelled to produce information whose production is the ultimate issue in dispute in this case. Requiring non-party PMA to provide this information in response to a subpoena would circumvent any confidentiality objections or other defenses that Local 23 may have had to producing it.

Additionally, non-party PMA should not be required to produce information that is outside of the scope of issues that the Regional Director alleged in the Complaint. Specifically, non-party PMA should not be required to produce information that relates to allegations that the Region dismissed during its investigation.

Non-party PMA requests that the Subpoena be revoked in its entirety.

I. LEGAL STANDARD FOR REVOKING A SUBPOENA.

Section 102.31(b) of the Board's Rules and Regulations provides that the Administrative Law Judge or the Board:

> [W]ill revoke the subpoena if in their opinion the evidence whose production is required does not relate to any matter under investigation or in question in the

> proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for *any other reason sufficient in law* the subpoena is otherwise invalid.

(emphasis added). In *Brink's, Inc.*, 281 NLRB 468, 469 (1986), the Board held that the Federal Rules of Civil Procedure should serve as guidance to determine "any other reason sufficient in law" to revoke a subpoena, including for the reasons set forth in Federal Rule of Civil Procedure 26(c)(1) – *i.e.*, annoyance, embarrassment, oppression, or undue burden or expense.

The Federal Rules of Civil Procedure prohibit attempts to obtain information in a cumulative or duplicative manner, and which would place an undue burden on non-parties to the litigation. Federal Rule of Civil Procedure 26(b)(2)(C)(i)–(ii) states, in relevant part, that "the court must limit the frequency of extent of discovery otherwise allowed" where "the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive" or where "the party seeking discovery has had ample opportunity to obtain the information by discovery in the action[.]" Likewise, Federal Rule of Civil Procedure 45(d)(3)(A) provides that a subpoena shall be quashed or modified if it "fails to allow reasonable time for compliance," "requires disclosure of privileged or other protected matter and no exception or waiver applies," or "subjects a person to undue burden."

A subpoena is unduly burdensome if production within the allotted time "would seriously disrupt . . . normal business operations." *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 513–14 (4th Cir. 1996), *cited with approval in McAllister Towing & Transp. Co.*, 341 NLRB 394, 397 (2004), *enfd.* 156 F. App'x 386 (2d Cir. 2005). Moreover, there is "a heightened regard for the burden to be imposed on a third party" in determining whether to quash a subpoena

served upon a non-party to the case. *See In re Subpoena to Goldberg*, 693 F. Supp. 2d 81, 88 (D.D.C. 2010); *Schaaf v. SmithKline Beecham Corp.*, 233 F.R.D. 451, 453 (E.D.N.C. 2005).

II. THE SUBPOENA SHOULD BE REVOKED.

The Subpoena should be revoked because it fails to meet the standards set forth in the Board's Rules and Regulations and the Federal Rules of Civil Procedure.

A. Non-Party PMA Should Not Be Compelled to Produce Information in the Possession of a Party

It is an undue burden to require a non-party to produce information available from a party. *See McDonald's USA, LLC*, 363 NLRB No. 144, slip op. at 15–16 (2016) (granting petition to revoke subpoenas *duces tecum* served on non-parties where "the majority of information sought by [the respondent] . . . [could have] be[en] obtained from another source—namely [the union] and the other Charging Parties," because "the Charging Parties [were] a more convenient, less burdensome source for the information sought," and the subpoenas issued to the non-parties "reiterate[d] demands for materials also directed to [the union] and the other Charging Parties, [and were] therefore cumulative and duplicative in nature . . . [and] present[ed] an undue burden" to the non-parties); *see also Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 412 & n.6 (C.D. Cal. 2014) (granting motion to quash subpoena issued to non-party because information sought was available from parties to the litigation).

The information—minutes from meetings where disqualified applicants were reinstated—sought in the Subpoena is within the scope of the information— "minutes containing and/or concerning grievances filed by casuals requesting reinstatement"—that the Regional Director accuses Respondent Local 23 of failing or refusing to produce to Charging Party. PMA,

as a non-party, should not be compelled to produce information that can be obtained from the Respondent.

B. Non-Party PMA Should Not Be Compelled to Produce Information Whose Production Is the Ultimate Issue in Dispute in This Case, Especially If Producing It Were to Circumvent Respondent's Objections and Defenses to Producing the Information

If PMA were required to produce the information sought in the Subpoena, that would provide the Charging Party with the remedy sought in this case: an order for the Respondent to produce the information that the Regional Director alleges the Respondent unlawfully failed or refused to provide to the Charging Party. Production of this information by non-party PMA would circumvent the Respondent's objections and defenses to producing the information to the Charging Party. The Subpoena is therefore an inappropriate attempt by the Charging Party to obtain the remedy sought in this case without going through the process of litigating the allegations of the Complaint.

C. Non-Party PMA Should Not Be Compelled to Produce Information That Relates to Allegations that the Region Dismissed During its Investigation

The information that is the subject of the Subpoena also appears to relate to allegations about Charging Party's disqualification that the Region dismissed during its investigation of the charge. The Region's October 18, 2022 dismissal letter is attached hereto as **Exhibit B**. The Office of Appeals' December 5, 2022 denial of an appeal from the Region's dismissal decision is attached hereto as **Exhibit C**.[1] The Subpoena should be revoked to the extent it seeks information for the purpose of litigating any of the dismissed allegations.

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[1] The General Counsel is for responsible for the redactions made to the attached denial of appeal letter.

III. CONCLUSION

For the foregoing reasons, PMA respectfully requests that its petition to revoke the Subpoena be granted.

Dated: June 12, 2023

Respectfully Submitted,

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