

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

FRED MEYER STORES, INC.

and

ALLIED EMPLOYERS

and

UNITED FOOD AND COMMERCIAL  
WORKERS LOCAL 367, affiliated with  
UNITED FOOD AND COMMERCIAL  
WORKERS INTERNATIONAL UNION

Case Nos. 19-CA-32908  
19-CA-33052

**UNION'S REQUEST FOR SPECIAL PERMISSION TO APPEAL  
ADMINISTRATIVE LAW JUDGE'S DENIAL OF PARTS OF UNION'S  
PETITION TO REVOKE AND REQUEST TO APPEAL ALJ'S RULING**

Pursuant to Rule 102.26, United Food and Commercial Workers Local 367 ("UFCW" or "the Union") requests special permission to appeal the Administrative Law Judge's ("ALJ") ruling on the Union's Petition to Revoke the Respondents' Subpoena Duces Tecum No. B-648027 in consolidated Case Nos. 19-CA-32908 and 19-CA-33052. See Subpoena Duces Tecum No. B-648027 attached hereto as Attachment A. If special permission to appeal is granted, the Union moves the Board to revoke the portions of the Respondents' Subpoena that seek the Union's position statements authored by its attorneys and filed with Region 19 during the course of the investigation and that seek the Union's confidential Bylaws and Constitution.

**SUMMARY OF FACTS**

This case involves an Employer's refusal to bargain after workers participated in self-determination elections in 2009 and choose to join existing UFCW-represented

bargaining units at their workplaces. On February 29, 2012, a Complaint was issued against Fred Meyer and Allied Employers (the “Respondents”) for engaging in multiple violations of Section 8(a)(1) and (5) of the NLRA, 29 U.S.C. §158(a)(1) and (5). *See* February 29, 2012, Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, attached hereto as Attachment B.

On July 12, 2012, Respondents served a Subpoena Duces Tecum (“Subpoena”) containing 40 requests for production upon the Union. *See* Attachment A. The Union, believing the Subpoena to be overbroad, cumulative, and clearly a fishing expedition meant to unduly burden the Union, as well as an attempt to get at private, confidential, internal union communications that had little to no relevance in the case filed a timely Petition to Revoke. *See* Attachment C.

On July 25, 2012, the ALJ revoked or limited many of the requests. However, he ordered the Union to turn over its Constitution and Bylaws and the position statements it had submitted to Region 19 during the investigation. The ALJ insisted that the Union provide the position statements for *in camera* review. After reviewing the documents, the ALJ ordered the constitution, bylaws, and position statements produced. Citing *Evergreen Am. Corp.*, 348 NLRB 178 (2006), *aff’d Evergreen v. NLRB*, 531 F.3d 321 (4<sup>th</sup> Cir. 2008) and *Raleys*, 348 NLRB 382 (2006), the ALJ reasoned the position statements of a charging party are not protected by the work product doctrine and that because of the length of one of the position statements (25 pages), there was the possibility that somewhere in the position statement, there was evidence contradictory with the Union’s position at the hearing. The ALJ did not identify any particular conflict and, at the

hearing, the General Counsel disagreed with the ALJ's ruling, stating that it believed that *Kaiser Aluminum*, 339 NLRB 829 (2003) controlled.

As to his reasoning for ordering production of the Bylaws and Constitution, the ALJ explained that he saw no reason the Union should not want these documents disclosed and that therefore they should be produced. Specifically, he held that the Union's concerns regarding employer abuse amounted to "nothing." The Union had objected to the Bylaws and Constitutions production because they were not relevant to the proceeding. Believing the ALJ's ruling to be in error, and in conflict with current NLRB authority, the Union files this special appeal.

#### **REASONS SPECIAL APPEAL SHOULD BE GRANTED**

The Board should grant the Union's request for special permission to appeal the ALJ's ruling on the Union's Petition to Revoke Respondents' Subpoena Duces Tecum no. B-648027, as the Subpoena orders the Union to produce position statements that are privileged work product, and the Union's Bylaws and Constitution, which are not relevant in this case. The ALJ's ruling is contrary to clearly established Board precedent, as set forth in *Kaiser Aluminum*, 339 NLRB 829 (2003), and related case law, *infra*. Additionally, the Board precedent cited by the ALJ does not support the ALJ's decision and instead supports the Union's position that charging party position statements are protected under the work product doctrine.

The confidentiality of the position statements of the charging party are of paramount interest to the Board and essential to investigation of unfair labor practice allegations. Without an assurance of the confidentiality of information shared with the Regions, the relationship of the charging party and the Region becomes strained; greatly

diminishing the Region's ability to protect the rights of parties and perform its prosecutorial functions.

The restriction of frivolous, overbroad discovery requests is essential to the efficient operation of Board proceedings, as well as essential to protect parties from fishing expeditions which strain resources and expose irrelevant, yet sensitive information. A party to a NLRB proceeding should not be allowed to weaken the resolve of the other party through discovery processes that are intended to provide each side with a fair opportunity to argue their case based on the relevant facts.

The Board should grant the Union's request for special permission to appeal the ALJ's ruling because, if the ALJ's ruling is allowed to stand, the Employer will receive the confidential work product of Union's counsel, as well as the irrelevant, yet sensitive internal management documents of the Union. As fully described in the grounds relied on for appeal below, this would nullify the protections afforded attorneys by the "work product doctrine," which "applies to unfair labor practice proceedings, specifically to a position statement submitted by counsel for a charging party to the GC in support of its charge during the GC's investigation." *Kaiser Aluminum*, 339 NLRB 829 (2003). *See also Interstate Builders, Inc.*, 334 NLRB 835 (2001).

#### **LEGAL GROUNDS RELIED ON FOR APPEAL**

The Union appeals the ALJ's ruling and moves the Board to revoke portions of the Respondents' Subpoena No. B-648027, which demanded the production of 1) the Union's Constitution and Bylaws and 2) the Union's position statements filed with Region 19 prior to the issuance of the Complaint. The ALJ decision conflicts with long standing Board precedent and should be reversed.

*Positions Statements*

The ALJ's decision is clearly contrary to board precedent concerning the work product doctrine. In *Kaiser, supra*, 339 NLRB 829 (2003), the Board reversed the ALJ and ordered an employer's Subpoena Duces Tecum that sought the production of the position statement of a charging party union be quashed:

On appeal, we reverse the judge's ruling. Contrary to the judge, we find that the work product doctrine as reflected in Rule 26(b)(3) of the Federal Rules of Civil Procedure applies to unfair labor practice proceedings, and *specifically to a position statement submitted by counsel for a charging party to the General Counsel in support of its charge during the General Counsel's investigation*. We further find that a charging party does not waive the work product privilege by submitting such a position statement to the General Counsel.

Here, it appears undisputed that the Charging Party's position statements constitute "work product" within the meaning of FRCP 26(b)(3). Further, we find that the Charging Party did not waive the privilege by submitting the position statements to the General Counsel during the investigation. Finally, we find that the Respondent has not demonstrated a substantial need for the position statements. Accordingly, we shall quash the subpoena to the extent it seeks the Charging Party's position statements.

339 NLRB at 829. (Emphasis added).

A recent administrative decision applied *Kaiser*. See *Unite Here*, 26-CB-5146, 2010 WL 5455856 (N.L.R.B. Div. of Judges, Dec. 28, 2010) (ALJ ruled position statements of union lawyers were protected under the work product doctrine based on *Kaiser*).

The material facts in this case are identical to those of *Kaiser* and therefore the ALJ should have applied its holding. First, both cases concern ULP charges against an employer. Second, in both cases the employer respondents requested the position papers of the charging party union. Third, in both cases the union filed a petition to revoke and claimed the position statements were protected under the work product privilege. Lastly,

in both cases the requested position statements contained no contradictory statements or assertions that might be used to impeach any witness. Thus, it is clear, as the Counsel for the General Counsel stated at the hearing, *Kaiser* controls.

In contrast, the cases relied upon by the ALJ to support his decision are materially different from this case, and explicitly leave undisturbed the precedential weight of *Kaiser* regarding work product protections for union position papers when the union is the charging party. Both *Evergreen* and *Raley* addressed the issue of whether a respondent employer's (and not a charging party's) position statement was protected by the work product doctrine. See *Evergreen*, 348 NLRB 178 (2006) and *Raley*, 348 NLRB 382 (2006). In *Evergreen*, the ALJ explained that *Kaiser* was not applicable because it dealt with the position statement of a charging party and not a respondent employer:

[I] cannot agree with Respondent's assertion that *Kaiser Aluminum* represents a "wholesale overruling" of prior precedent since the decision did not so state, and made no mention of position papers filed by Respondents.

The General Counsel's distinction between the Charging Party and Respondent's position papers, based on whether they are considered "adversaries" or potential adversaries to the General Counsel, may very well be valid, and the rationale for different rules concerning the admissibility of position papers in Board proceedings. I need not and do not decide that issue, since as detailed above, Board cases, post *Kaiser Aluminum* continue to rely upon position papers filed by Respondents. *Tarmac America*, supra; *Smucker Co.*, supra; *United Scrap Metal*, supra. Accordingly I reaffirm my ruling to admit into evidence Respondent's position papers that it filed with the Region in connection with the investigation of the Union's charges and objections.

*Evergreen*, NLRB at 188.

Moreover, there is not a single case since *Kaiser* in which the Board or an ALJ has required a union charging party turn over its position statement. Allowing the ALJ to do so in this case would create a chilling new precedent, which would discourage

charging parties from sharing information during the investigation process. Such an action would also stifle the Region's ability to cooperatively work with parties to discover all relevant information, and ultimately inhibit the General Counsel in its prosecutorial function.

*Bylaws and Constitution*

The Union's Bylaws and Constitution are in no way relevant to this case and the request of them represents a fishing expedition likely aimed at unduly burdening the Union, as well as an abuse of the discovery process by seeking to get at sensitive, strategic documents, completely irrelevant to the charges at hand. In this case, the Respondents argued that they need access to the Union's Bylaws and Constitution because they believed they might have information relevant to the case. The ALJ reviewed the documents *in camera* and admitted that he could not see their relevance, however, he decided to order their production because he could not understand why the Union would want to keep them secret.

The ALJ substituted his own feelings for the correct legal standard. Section 102.66(c) of the Board's Rules and Regulations provides in pertinent part:

The regional director or the hearing officer, as the case may be, shall revoke the subpoena, if, in his 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.

29 C.F.R § 102.66(c); *see also* 29 C.F.R. § 102.31(b) (same).

The ALJ decided that the Bylaws and Constitution should be produced not because he could imagine why they might be relevant, but instead because he could not see why the Union would want to keep the documents private. The standard by which a

relevance objection is reviewed is that of the relevance of the evidence.

Board precedent is clear: when subpoenas are speculative in nature and represent fishing expeditions, motions to quash the subpoena should be upheld. *See Interstate Builders*, 334 NLRB at 841 (affirming an order to quash the subpoena of a union's bylaws and constitution); *Burns International Security Services, Inc.*, 278 NLRB 565 (1986) (quashing request for bylaws and constitution because the employer had asserted no facts supporting any connection to the constitution or bylaws); and *Nat'l Beverages, Inc.*, 173 NLRB 936 (1968) (in refusal to bargain case, the Board upheld ALJ's revocation of employer subpoena seeking, *inter alia*, the Union's Constitution and Bylaws because "it was apparent that the issues relating to those documents had either been litigated earlier in the representation case, or they were immaterial and irrelevant to any issue in the complaint proceeding"). Here, the Union's Constitution and Bylaws are not relevant and were not found to be relevant by the ALJ, and thus the request of those documents should be quashed.

Lastly, the Respondents' subpoena is clearly a fishing expedition and is likely meant to unduly burden the Union; therefore, it must be quashed. In both *Burns* and *Interstate Builders*, the Board was clear that subpoenas in which the requesting party appears to be engaging in a fishing expedition are not allowed. *See Burns*, 278 NLRB at 565-66; and *Interstate Builders*, 334 NLRB at 841-42. In *Interstate*, the Board inferred that the employer was using the discovery process as a weapon, saying the request appeared to be "a collateral attack on the Union's organizing practices or 'salting' program." 334 NLRB at 842.

This Employer is already under court order to desist its unfair labor practices

against the Union, yet it continues its unlawful practices necessitating yet another legal action by the General Counsel. There is no connection between this case and the Union's internal operational documents. Releasing these documents to the Employer will merely provide the Employer with another avenue to undermine its employees' rights to organize.

### CONCLUSION

For the above reasons, the Union requests special permission to appeal to the Board the Administrative Law Judge's ruling on the Union's Petition to Revoke Respondents' Subpoena Duces Tecum No. B-648027. If special permission is granted, the Union appeals such ruling and moves the Board to revoke Respondents' Subpoena Duces Tecum No. B-648027 to prevent the Employer from gaining access to documents protected under the attorney work product doctrine and sensitive documents irrelevant to the case at hand.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of July, 2012.



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Carson Glickman-Flora, WSBA No. 37608  
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CERTIFICATE OF SERVICE

I hereby certify that on this 31<sup>st</sup> day of July, 2012, I caused the foregoing Union's Request For Special Permission to Appeal ALJ Ruling and Appeal From ALJ Ruling On The Union's Petition to Revoke Subpoena to be filed via e-filing with the Executive Secretary of the Board at [www.nlr.gov](http://www.nlr.gov), and true and correct copies of the same to be sent via email to:

Richard J. Alli Jr.  
Jennifer A. Sabovik  
Bullard Law  
200 SW Market Street, Suite 1900  
Portland, OR 97201  
[ralli@bullardlaw.com](mailto:ralli@bullardlaw.com)  
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2948 Jackson Federal Building  
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Seattle, WA 98174-1078  
[Ann-Marie.Skov@nlrb.gov](mailto:Ann-Marie.Skov@nlrb.gov)

And via email to:

Gregory Z. Meyerson  
Administrative Law Judge  
National Labor Relations Board, Division of Judges  
901 Market Street, Suite 300  
San Francisco, CA 94103-1779  
[Gregory.Meyerson@NLRB.gov](mailto:Gregory.Meyerson@NLRB.gov)



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Carson Glickman-Flora, WSBA No. 37608

# EXHIBIT A

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

To Custodian of Records

UFCW Local 367, 6403 Lakewood Drive W., Tacoma, WA 98467

As requested by Richard J. Alli, Jr., Counsel for Fred Meyer Stores, Inc.

whose address is 200 SW Market St., Suite 1900, Portland, OR 97201  
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE \_\_\_\_\_

an Administrative Law Judge \_\_\_\_\_ of the National Labor Relations Board

at Jackson Federal Bldg., James C. Sand Hearing Rm. 2966, 915 Second Ave.

in the City of Seattle, WA

on the 24th day of July 2012 at 9 : 00 (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in FRED MEYER STORES, INC. AND ALLIED EMPLOYERS

Cases 19-CA-32908 and 19-CA-33052  
(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 Attached\*\***

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 - 648027**

Issued at Portland, Oregon

this 12th day of July

20 12



*Lesfer A. Helzer*

**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.

## ATTACHMENT A

### INSTRUCTIONS AND DEFINITIONS

1. The term "document(s)" as used herein includes all tangible records of information or communication and all matters which can be made tangible, and includes all written, typed, printed, electronic, photographic, or similar records as well as information or communication maintained or recorded on tape, microfilm, microfiche, in computers or the like. The term "document(s)" also includes the entire record in which any responsive material is found and all copies thereof. Finally, the term "document(s)" includes all non-identical copies.

2. "UFCW" or "Union" as used herein shall refer to Responding Party United Food and Commercial Workers Local No. 367, affiliated with United Food and Commercial Workers International, your attorneys of record, any agents or investigators of said attorneys, and anyone else acting on your behalf.

3. "Complaint" as used herein shall refer to the Consolidated Complaint issued by the National Labor Relations Board, Region 19, in Case Nos. 19-CA-32908, and 19-CA-33052. A copy of the Complaint is attached hereto for your reference.

4. "Fred Meyer" or "Employer" as used herein shall refer to Fred Meyer Stores, Inc., unless otherwise defined within a particular request for production.

5. "Allied Employers" as used herein shall refer to Allied Employers, Inc., unless otherwise defined within a particular request for production.

6. This subpoena seeks documents that are now or were formerly in your actual or constructive possession, custody or control or the actual or constructive possession, custody or control of your agent or representative. If a document is responsive to this subpoena, but is not in your (or your agent's or representative's) possession, custody or control, for each such document state:

- a. The disposition that was made of it;
- b. By whom that disposition was made;
- c. The date or dates on which such disposition was made; and
- d. Why that disposition was made;

7. If any document that is responsive to this subpoena is withheld from production on the grounds of privilege or any other legally recognized standard, we request that you provide the following information for each such document

- a. The legal basis on which you claim protection against production;
- b. The date of each such document;

- c. The nature of the document (e.g., letter, memorandum, etc.);
- d. The full name, job title, last-known address and telephone number of each author of the document;
- e. The full name, job title, last-known address and telephone number of each addressee and named recipient of the document;
- f. The full name and job title of each person who, to your knowledge, has seen the document (including any copy or versions thereof);
- g. The present custodian of the document; and
- h. In general, the substance of the document.

8. This subpoena is not intended to infringe upon any rights guaranteed to any party under the National Labor Relations Act, and seeks the production only of documents or electronically stored information that may be produced without infringing upon such rights. If any document or item of electronically stored information, or any portion thereof, is withheld on the basis that its production would infringe upon the rights guaranteed to any party by the National Labor Relations Act, please follow the instructions provided in Number 7 above to the extent you can without infringing upon such rights.

- 9. We request that your response be segregated by document request number.

#### **DOCUMENTS REQUESTED**

REQUEST NO. 1: Copies of the Union's most recent constitution and bylaws.

REQUEST NO. 2: All documents that refer or relate to the May 25, 2007, "me too" agreement between the Union and Allied Employers.

REQUEST NO. 3: All documents that refer or relate to ratification of the May 25, 2007, "me too" agreement between the Union and Allied Employers.

REQUEST NO. 4: All documents evidencing communications between the Union and UFCW Local 21 regarding the May 25, 2007, "me too" agreement between the Union and Allied Employers.

REQUEST NO. 5: All documents evidencing communications between the Union and UFCW Local 81 regarding the May 25, 2007, "me too" agreement between the Union and Allied Employers.

REQUEST NO. 6: All documents evidencing communications between the Union and the UFCW International Union regarding the May 25, 2007, "me too" agreement between the Union and Allied Employers.

REQUEST NO. 7: All documents evidencing communications distributed by the Union to its members regarding the May 25, 2007, "me too" agreement between the Union and Allied Employers.

REQUEST NO. 8: All documents that refer or relate to the March 18, 2010, "me too" agreement between the Union and Allied Employers.

REQUEST NO. 9: All documents that refer or relate to ratification of the March 18, 2010, "me too" agreement between the Union and Allied Employers.

REQUEST NO. 10: All documents evidencing communications between the Union and UFCW Local 21 regarding the March 18, 2010, "me too" agreement between the Union and Allied Employers.

REQUEST NO. 11: All documents evidencing communications between the Union and UFCW Local 81 regarding the March 18, 2010, "me too" agreement between the Union and Allied Employers.

REQUEST NO. 12: All documents evidencing communications between the Union and the UFCW International Union regarding the March 18, 2010, "me too" agreement between the Union and Allied Employers.

REQUEST NO. 13: All documents evidencing communications distributed by the Union to its members regarding the March 18, 2010, "me too" agreement between the Union and Allied Employers.

REQUEST NO. 14: All documents that refer or relate to bargaining regarding the Lacey and Tumwater nutrition employees referred to in paragraph 5 of the Complaint.

REQUEST NO. 15: All documents evidencing communications between the Union and UFCW Local 21 regarding the Lacey and Tumwater nutrition employees referred to in paragraph 5 of the Complaint.

REQUEST NO. 16: All documents evidencing communications between the Union and UFCW Local 81 regarding the Lacey and Tumwater nutrition employees referred to in paragraph 5 of the Complaint.

REQUEST NO. 17: All documents evidencing communications between the Union and the UFCW International Union regarding the Lacey and Tumwater nutrition employees referred to in paragraph 5 of the Complaint.

REQUEST NO. 18: All documents evidencing communications distributed by the Union to its members regarding the Lacey and Tumwater nutrition employees referred to in paragraph 5 of the Complaint.

REQUEST NO. 19: All documents that refer or relate to bargaining regarding the University Place playland employees referred to in paragraph 6 of the Complaint.

REQUEST NO. 20: All documents evidencing communications between the Union and UFCW Local 21 regarding the University Place playland employees referred to in paragraph 6 of the Complaint.

REQUEST NO. 21: All documents evidencing communications between the Union and UFCW Local 81 regarding the University Place playland employees referred to in paragraph 6 of the Complaint.

REQUEST NO. 22: All documents evidencing communications between the Union and the UFCW International Union regarding the University Place playland employees referred to in paragraph 6 of the Complaint.

REQUEST NO. 23: All documents evidencing communications distributed by the Union to its members regarding the University Place playland employees referred to in paragraph 6 of the Complaint.

REQUEST NO. 24: All documents that refer or relate to the 2007 negotiations held in Seattle, Washington, between UFCW Locals 21 and 81 and Allied Employers, and which were the subject of the May 25, 2007, "me too" agreement, including but not limited to all documents evidencing communications with UFCW Locals 21 and 81 and the UFCW International Union.

REQUEST NO. 25: All documents evidencing communications distributed by the Union to its members regarding the 2007 negotiations held in Seattle, Washington, between UFCW Locals 21 and 81 and Allied Employers, and which were the subject of the May 25, 2007, "me too" agreement.

REQUEST NO. 26: All documents that refer or relate to the 2010 negotiations held in Seattle, Washington, between UFCW Locals 21 and 81 and Allied Employers, and which were the subject of the March 18, 2010, "me too" agreement, including but not limited to, all documents evidencing communications with UFCW Locals 21 and 81 and the UFCW International Union.

REQUEST NO. 27: All documents evidencing communications distributed by the Union to its members regarding the 2010 negotiations held in Seattle, Washington, between UFCW Locals 21 and 81 and Allied Employers, and which were the subject of the March 18, 2010, "me too" agreement.

REQUEST NO. 28: All documents that refer or relate to the Union's requests to bargain as described in paragraph 7(b) of the Complaint.

REQUEST NO. 29: All documents that refer or relate to the Union's requests to bargain as described in paragraph 7(c) of the Complaint.

REQUEST NO. 30: All documents evidencing communications distributed by the Union to its members regarding the Union's requests to bargain as described in paragraph 7(b) of the Complaint.

REQUEST NO. 31: All documents evidencing communications distributed by the Union to its members regarding the Union's requests to bargain as described in paragraph 7(c) of the Complaint.

REQUEST NO. 32: All documents that refer or relate to Allied Employers' presentation to the Union of a collective-bargaining agreement for the Expanded Grocery unit, as described in paragraph 7(d) of the Complaint, including but not limited to, all documents evidencing communications with UFCW Locals 21 and 81 and the UFCW International Union.

REQUEST NO. 33: All documents that refer or relate to Allied Employers' presentation to the Union of a collective-bargaining agreement for the Expanded CCK unit, as described in paragraph 7(e) of the Complaint, including but not limited to, all documents evidencing communications with UFCW Locals 21 and 81 and the UFCW International Union.

REQUEST NO. 34: All documents evidencing communications distributed by the Union to its members regarding Allied Employers' presentation to the Union of a collective-bargaining agreement for the Expanded Grocery unit, as described in paragraph 7(d) of the Complaint.

REQUEST NO. 35: All documents evidencing communications distributed by the Union to its members regarding Allied Employers' presentation to the Union of a collective-bargaining agreement for the Expanded CCK unit, as described in paragraph 7(e) of the Complaint.

REQUEST NO. 36: All documents that refer or relate to Carl Wojciechowski's letter dated January 5, 2011, as described in paragraph 8 of the Complaint, including but not limited to, documents evidencing communications distributed by the Union to its members.

REQUEST NO. 37: All documents that refer or relate to the ratification bonuses referred to in paragraphs 8 and 9 of the Complaint, including but not limited to, documents evidencing communications distributed by the Union to its members.

REQUEST NO. 38: All documents supporting the argument that the Lacey and Tumwater nutrition and University Place playland employees are entitled to receive the lump sum ratification bonuses referred to in paragraph 9(e) of the Complaint.

REQUEST NO. 39: All documents supporting the argument that the Lacey and Tumwater nutrition and University Place playland employees are entitled to receive the July 2011 hourly wage increase referred to in paragraph 9(e) of the Complaint.

REQUEST NO. 40: All documents that refer or relate to the unfair labor practice charges filed by the Union with the National Labor Relations Board in Case Nos. 19-CA-32908 and 19-CA-33052. (This request does not seek production of any affidavit prepared by an agent of the National Labor Relations Board, but does seek production of any and all documents

submitted by the Union to the National Labor Relations Board in support of the unfair labor practice charges filed in Case Nos. 19-CA-32908 and 19-CA-33052.)

# EXHIBIT B

RECEIVED  
MAR - 1 2012

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

FRED MEYER STORES, INC.

and

Cases 19-CA-32908  
19-CA-33052

ALLIED EMPLOYERS

and

UNITED FOOD AND COMMERCIAL WORKERS  
LOCAL 367, AFFILIATED WITH UNITED FOOD  
AND COMMERCIAL WORKERS  
INTERNATIONAL UNION

**ORDER CONSOLIDATING CASES, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING**

United Food and Commercial Workers Local 367, affiliated with United Food and Commercial Workers International Union (the "Union"), has charged in Cases 19-CA-32908 and 19-CA-33052, that Fred Meyer Stores, Inc. ("Respondent Fred Meyer"), and Allied Employers ("Respondent Allied") (collectively, called "Respondents"), have been engaging in unfair labor practices as set forth in the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.*

Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel of the National Labor Relations Board (the "Board"), by the undersigned, pursuant to § 102.33 of the Board's Rules and Regulations, **ORDERS** that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to § 10(b) of the Act and § 102.15 of the Board's Rules and

Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing alleges as follows:

1.

(a) The Charge in Case 19-CA-32908 was filed by the Union on January 14, 2011, and was served on Respondents by regular mail on or about January 18, 2011.

(b) The Amended Charge in Case 19-CA-32908 was filed by the Union on March 15, 2011, and was served on Respondents by regular mail on or about March 16, 2011.

(c) The Second Amended Charge in Case 19-CA-32908 was filed by the Union on April 28, 2011, and was served on Respondents by regular mail on or about April 29, 2011.

(d) The Charge in Case 19-CA-33052 was filed by the Union on April 15, 2011, and was served on Respondents by regular mail on or about that date.

(e) The Amended Charge in Case 19-CA-33052 was filed by the Union on April 28, 2011, and was served on Respondents by regular mail on or about that date.

2.

(a) Respondent Allied is a non-profit multi-employer association owned by its various employer members, including Respondent Fred Meyer, who are engaged in the retail grocery business, among other businesses, and represents its employer-members in negotiating and administering collective bargaining agreements with various labor organizations, including the Union.

(b) Respondent Fred Meyer, among other employer members, has delegated to Respondent Allied its representation its in negotiating and administering collective bargaining agreements with the Union.

(c) Respondent Fred Meyer, a State of Ohio corporation with offices and places of business, *inter alia*, in Tacoma, Lacey, and Tumwater, Washington (the "facilities"), is engaged in the retail grocery business.

(d) Respondent Fred Meyer, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(c), derived gross revenues in excess of \$500,000.

(e) Respondent Fred Meyer, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(c), purchased and received at its facilities goods valued in excess of \$50,000 directly from points outside the State of Washington.

(f) Respondent Allied and its employer members, including Respondent Fred Meyer, have each and collectively been at all material times employers engaged in commerce within the meaning of §§ 2(2), (6) and (7) of the Act.

3.

The Union is, and has been at all material times, a labor organization within the meaning of § 2(5) of the Act.

4.

(a) At all material times, Carl Wojciechowski has held the position of Group Vice President, Human Resources for Respondent Fred Meyer, and is and has

been a supervisor within the meaning of § 2(11) of the Act, and/or an agent of Respondent Fred Meyer within the meaning of § 2(13) of the Act, acting on behalf of Respondent Fred Meyer.

(b) At all material times, Randy L. Zeiler has held the position of President and Scott Klitzke Powers has held the position of Vice President, and have been agents of Respondent Allied within the meaning of § 2(13) of the Act, acting on behalf of Respondent Allied.

5.

(a) The following employees of Respondent Fred Meyer (the "Grocery Unit"), constituted a unit appropriate for the purpose of collective bargaining within the meaning of § 9(b) of the Act:

All employees employed in the [Respondent Fred Meyer's] present and future grocery stores in Mason-Thurston Counties, State of Washington; excluding employees whose work is performed within a meat, culinary, prescription or bakery production department location of the retail establishment, [and] supervisory employees within the meaning of the [Act].

(b) Since at least 2001, and at all material times, based on § 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the Grocery Unit and, since then, has been recognized as such representative by Respondent Fred Meyer. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 6, 2007, to May 1, 2010.

(c) Pursuant to a self-determination election on or about April 24, 2009 in Case 19-RC-15036, and a Corrected Certification of Representative that issued on

May 7, 2009, a voting group consisting of all regular full-time and part-time employees, clerks, and assistant managers working in the nutrition departments of the Respondent Fred Meyer's Lacey and Tumwater, Washington, retail stores (the "nutrition voting group"), were certified as being included in the Grocery Unit (the "Expanded Grocery Unit").

(d) The following employees of Respondent Fred Meyer in the Expanded Grocery Unit constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act:

All employees employed in the Respondent Fred Meyer's present and future grocery stores in Mason-Thurston Counties, State of Washington, and all regular full-time and part-time employees, clerks, and assistant managers working in the nutrition department of the Respondent Fred Meyer's Lacey and Tumwater, Washington, retail stores; excluding Nutrition Department Managers of the Lacey and Tumwater, Washington, retail stores, employees whose work is performed within a meat, culinary, prescription or bakery production department location of the retail establishment, [and] supervisory employees within the meaning of the [Act].

(e) Respondent Fred Meyer challenged the Union's certification and refused to bargain collectively with the Union as the exclusive collective-bargaining representative of the nutrition voting group. On August 26, 2010, the Board issued a decision and order requiring Respondent Fred Meyer to recognize and bargain with the Union as the exclusive collective bargaining representative of the nutrition voting group now a part of the Expanded Grocery Unit. *Fred Meyer, Inc.*, 355 NLRB No. 141 (2010). On January 9, 2012, the Ninth Circuit Court of Appeals enforced the Board's Order.

(f) At all material times, since August 26, 2010, based on § 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Expanded Grocery Unit.

6.

(a) The following employees of Respondent Fred Meyer's Pierce County common check unit (the "CCK Unit"), constituted a unit appropriate for the purpose of collective bargaining within the meaning of § 9(b) of the Act:

... all employees employed in the [Respondent Fred Meyer's] Combination Food/Non-Food Checkstand Departments in Pierce County and all future Combination Food/Non-Food Checkstand Departments in Pierce County . . . excluding the Department Manager and two Assistant Department Managers.

(b) Since at least 1990, and at all material times, based on § 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the CCK Unit and, since then, has been recognized as such representative by Respondent Fred Meyer. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 6, 2007, to May 1, 2010.

(c) Pursuant to a self-determination election on or about June 17, 2009 in Case 19-RC-15194, and a Corrected Certification of Representative that issued December 8, 2009, a voting group consisting of all regular full-time and part-time employees working in the Playland Department of Respondent Fred Meyer's University Place retail store, located in Tacoma, Washington (the "Playland Department voting group"), were certified as being included in the CCK Unit (the "Expanded CCK Unit").

(d) The following employees of Respondent Fred Meyer in the Expanded CCK Unit constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act:

All employees employed in Respondent Fred Meyer's Combination Food/Non-Food Checkstand Departments in Pierce County and all future Combination Food/Non-Food Checkstand Departments in Pierce County ... and all regular full-time and part-time employees working in the Playland Department of the Respondent Fred Meyer's University Place retail store, located in Tacoma, Washington; excluding guards, the Department Manager, two Assistant Department Managers, and supervisors as defined in the Act.

(e) Respondent Fred Meyer challenged the Union's certification and refused to bargain collectively with the Union as the exclusive collective-bargaining representative of the Playland Department voting group. On August 26, 2010, the Board issued a decision and order requiring Respondent Fred Meyer to recognize and bargain with the Union as the exclusive collective bargaining representative of the Playland Department voting group now a part of the Expanded CCK Unit. *Fred Meyer, Inc.*, 355 NLRB No. 130 (2010). On January 9, 2012, the Ninth Circuit Court of Appeals enforced the Board's Order.

(f) At all material times, since August 26, 2010, based on § 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Expanded CCK Unit.

7.

(a) In about March 2010, the Union and Respondent Allied, as part of multi-employer bargaining, entered a "me-too" agreement agreeing to extend the contract settlement reached in the 2010 King County UFCW Local 21/81 grocery, meat,

and CCK negotiations to all collective bargaining agreements within the Union's jurisdiction, with the caveat that "the difference in language between the King County ... agreements and [the Union's] agreements" would be preserved.

(b) On September 13, 2010 and November 9, 2010, the Union, by letter to Respondent Fred Meyer, requested to meet and bargain over the terms and conditions of employment for the nutrition voting group now a part of the Expanded Grocery Unit.

(c) On April 29, 2010 and November 9, 2010, the Union, by letter to Respondent Fred Meyer, requested to meet and bargain over the terms and conditions of employment for the Playland Department voting group now a part of the Expanded CCK Unit.

(d) In December 2010, Respondent Allied, pursuant to the parties' "me-too" agreement, presented the Union with a collective bargaining agreement for the Expanded Grocery Unit that altered its scope by removing the nutrition voting group of employees.

(e) In December 2010, Respondent Allied, pursuant to the parties' "me-too" agreement, presented the Union with a collective bargaining agreement for the Expanded CCK Unit that altered its scope by removing the Playland Department voting group of employees.

8.

On January 5, 2011, Respondent Fred Meyer, by Wojciechowski, posted a notice to its employees at all of its stores represented by the Union, blaming the Union

for lack of ratification bonuses and for the delay in reaching a collective bargaining agreement.

9.

(a) On March 2, 2011, the parties held an arbitration hearing to resolve, *inter alia*, whether the me-too agreement required removal of the nutrition voting group of employees and the Playland Department voting group of employees, from their respective Expanded Units.

(b) Inclusion of the two voting groups in their respective Expanded Units would require Respondents to pay the ratification bonus referenced in paragraph 8 above and to apply the terms of their respective agreements.

(c) On March 24, 2011, the arbitrator issued a decision and award finding, *inter alia*, that Respondents improperly applied the me-too agreement by proposing to exclude the nutrition voting group of employees from the Expanded Grocery Unit and proposing to exclude Playland Department voting group of employees from the Expanded CCK Unit. The arbitrator's award, *inter alia*, ordered the parties to "retain the status quo with regard to the scope of the bargaining unit," and ordered Respondents to distribute the lump sum ratification bonus upon the receipt and implementation of the award.

(d) On March 24, 2011, pursuant to the arbitrator's decision and award, the parties' collective bargaining agreements were retroactively implemented effective May 2, 2010, through May 4, 2013.

(e) Since March 24, 2011, Respondents have failed to distribute to the nutrition and Playland Department voting groups of employees the lump sum ratification

bonus and apply the general terms of their respective collective bargaining agreements retroactively, including the July 2011 hourly wage increase, health and welfare coverage under the Sound Health and Wellness Trust, and pension coverage under the Retail Clerks' Pension.

(f) The subject set forth above in paragraph 9(e) relates to wages, hours, and other terms and conditions of employment of the Expanded Grocery Unit and the Expanded CCK Unit and are mandatory subjects for the purpose of collective bargaining.

(g) Respondents engaged in the conduct described above in paragraph 9(e) without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct.

10.

Since September 13, 2010, and subsequent to that date, Respondents have failed to meet and bargain with the Union over the unique terms and conditions of employment of the nutrition voting group of employees as part of the Expanded Grocery Unit.

11.

Since April 29, 2010, and subsequent to that date, Respondents have failed to meet and bargain with the Union over the unique terms and conditions of employment of the Playland Department voting group of employees as part of the Expanded CCK Unit.

12.

By the conduct described above in paragraph 8, Respondent Fred Meyer has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(a)(1) of the Act.

13.

By the conduct described above in paragraphs 7(d), 7(e), 9(e), 10, and 11, Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees under the Act in violation of §§ 8(a)(1) and 8(a)(5) of the Act.

14.

By the acts described above in paragraphs 7 through 13, Respondents have engaged in unfair labor practices affecting commerce within the meaning of §§ 2(6) and (7) of the Act.

**WHEREFORE**, as part of the remedy for the unfair labor practices alleged above in paragraph 9, the Acting General Counsel seeks an Order requiring Respondents to distribute the lump sum ratification bonus to the nutrition and Playland Department voting groups of employees, apply the general terms of their respective collective bargaining agreements both retroactively and prospectively, and meet and bargain over unique terms and conditions of their employment; and

**WHEREFORE**, as part of the remedy for the unfair labor practices alleged above in paragraph 9, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-

sum payment and taxes that would have been owed absent the unfair labor practices of Respondents; and

**WHEREFORE**, the Acting General Counsel further seeks, as part of the remedy for the allegations in paragraph 9, that Respondents be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

#### **ANSWER REQUIREMENT**

Respondents are notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, they must file answers to the complaint. The answers must be **received by this office on or before March 14, 2012, or postmarked on or before March 13, 2012**. Unless filed electronically in a pdf format, Respondents should file an original and four copies of their answers with this office and serve a copy of the answers on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. To file an Answer electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Regional office's original correspondence in this matter, and is also available on [www.nlr.gov](http://www.nlr.gov) under the E-file tab. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical

failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf document containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of § 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the complaint are true.

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT** on the 15<sup>th</sup> day of June, 2012, at 9:00 a.m. in Seattle, Washington, at a place to be determined later, and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondents and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

**DATED** at Seattle, Washington, this 29th day of February, 2012.



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Anne Pomerantz, Acting Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174-1078

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO  
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, D.C.; San Francisco, California; New York, New York; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

*(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)*

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs or arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

Any party shall be entitled, on request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, D.C. (*or, in cases under the San Francisco, California branch office, the Deputy Chief Administrative Law Judge; or in cases under the branch offices in New York, New York, and Atlanta, Georgia, the Associate Chief Administrative Law Judge*) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge, Deputy Chief Administrative Law Judge, or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All brief or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce Government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

**NOTICE**

Fred Meyer Stores, Inc.  
Case 19-CA-32908  
Allied Employers  
Case 19-CA-33052

February 29, 2012

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 C.F.R. 102.16(a) or with the Division of Judges when appropriate under 29 C.F.R. 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

**CERTIFIED MAIL NO.**  
**7010 0290 0000 1115 3976**

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**REGULAR MAIL**

**REGULAR MAIL**

# EXHIBIT C

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

FRED MEYER STORES, INC.

and

ALLIED EMPLOYERS

Case Nos. 19-CA-32908  
19-CA-33052

and

UNITED FOOD AND COMMERCIAL  
WORKERS LOCAL 367, affiliated with  
UNITED FOOD AND COMMERCIAL  
WORKERS INTERNATIONAL UNION

**PETITION TO REVOKE SUBPOENA DUCES TECUM NO. B-648027**

Pursuant to Section 11(1) of the National Labor Relations Act, 29 U.S.C. § 161(1) and 29 C.F.R. § 102.31(b), the United Food and Commercial Workers Local 367 (“Union” or “UFCW 367”) petitions to revoke Subpoena Duces Tecum No. B-648027 (attached hereto as Attachment A; herein “the Subpoena”) requested by Fred Meyer Stores, Inc (“Fred Meyer” or “the Employer”). The Union requests that the Administrative Law Judge revoke or appropriately limit the requests set forth in the Subpoena. Forty requests have been made and, for ease of reference and to avoid repetition of the applicable legal authority, this Petition first sets forth the various grounds for revocation, which are common to many of the requests contained in the Subpoena. The Petition then addresses each request by corresponding paragraph number, referencing the grounds for revocation, as appropriate.

## BACKGROUND

The case involves Fred Meyer's refusal to bargain with UFCW 367 after workers in a playland department at a Pierce County Fred Meyer store voted to join an existing bargaining unit covered by the UFCW Local 367 - Fred Meyer Pierce County CCK collective bargaining agreement ("CBA"). *See*, Attachment B, Corrected Certification of Representative, Case No. 19-RC-15194 (December 8, 2009). Fred Meyer also refused to bargain after workers in nutrition departments in two Thurston County Fred Meyer stores voted to join an existing bargaining unit covered by the UFCW Local 367-Fred Meyer Mason/Thurston County Grocery CBA. *See*, Attachment B, Corrected Certification of Representative, Case No. 19-RC-15036 (May 7, 2009).

## ARGUMENT

The Employer's Subpoena should be revoked in its entirety, without prejudice, or substantially limited because the Subpoena requests documents that are unrelated to this case and/or protected from disclosure by the National Labor Relations Act. In addition, many of the requests in the Subpoena are also overbroad or cumulative and therefore revocation or limitation is warranted.

**I. The Subpoena Seeks a Substantial Amount of Information Not Related to Any Matter Under Litigation In This Matter And Therefore Those Portions Should Be Revoked.**

Section 102.66(c) of the Board's Rules and Regulations provides in pertinent part:

The regional director or the hearing officer, as the case may be, shall revoke the subpoena, if, in his 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.

29 C.F.R § 102.66(c); *see also* 29 C.F.R. § 102.31(b) (same).

While relevance is a liberal standard, the requests must nonetheless relate to some allegation pled in the complaint, provide background information on the allegation, or be likely to lead to the discovery of information potentially relevant to the allegation. *Brink's Inc.*, 281 NLRB 468, 468 (1986) (revoking entire subpoena without review of individual requests because it was drafted “without regard for the usual standards applicable to subpoenas or discovery” and documents sought were unrelated to issue in the case or were privileged).

*See also, NLRB v. Interstate Dress Carriers, Inc.*, 610 F.2d 99, 112 (3rd Cir. 1979) (quashing subpoena requesting documents unrelated to the matters at issue in the ULP proceeding); *Burns Sec. Services*, 278 NLRB 565, 566 (1986) (revoking requests about a defense when there was no evidence that would “even inferentially” support the employer’s defense theory and finding that therefore the request was merely a “fishing expedition”); *In Re Interstate Builders, Inc.*, 334 NLRB 835, 841 (2001) (upholding ALJ’s revocation of employer’s subpoena requests, including requests for constitution and bylaws, because the requests were “too speculative in nature” and were only “a fishing expedition type of subpoena”); *Nat'l Beverages, Inc.*, 173 NLRB 936, FN5 (1968) (revoking portions of subpoena in a bad faith bargaining case because “it was apparent that the issues relating to those documents had either been litigated earlier in the representation case, or they were immaterial and irrelevant to any issue in the complaint proceeding”).

A number of the requests contained in the Subpoena, as specifically set forth below, do not relate to matters at issue here and instead constitute a “fishing expedition” into communications, negotiations, strategies and information that may be beneficial to

Fred Meyer in positioning itself for future bargaining with the Union. These materials will be of no use to Fred Meyer in defending itself against the Complaint brought by the General Counsel. To the extent the Subpoena seeks information not related to matters at issue in this unfair labor practice proceeding, the Subpoena should be revoked or the individual requests appropriately limited.

**II. The Subpoena Should Be Revoked Because It Is Overbroad, Crafted In Such a Manner In That the Documents Sought Are Not Particularly Described, And Production Of The Subpoenaed Information Would Unduly Burden The Union.**

Many requests in the Subpoena are crafted in an unreasonably broad manner, without particularity as to the nature or type of document or information sought. Agency rules direct the Board to revoke a subpoena that “does not describe with sufficient particularity the evidence whose production is required.” 29 C.F.R. § 102.31(b). For example, the instant Subpoena seeks “All documents that refer or relate to the unfair labor practice charged filed by the Union with the National Labor Relations Board in Case Nos. 19-CA-32908,” Subpoena, Request #40, and “All documents that refer or relate to the May 25, 2007, “me too” agreement between the Union and Allied Employers,” Request #2.

Such broadly worded requests are revocable because they fail to describe the information sought with the requisite level of specificity, and thus impose an “undue burden” on the subpoenaed party. *FTC v. Texaco*, 555 F.2d 862, 882 (D.C. Cir. 1977), *cert. denied sub nom. Standard Oil of California v. FTC*, 431 U.S. 974 (1977). *Brink's Inc.*, *supra*, 281 NLRB 468, 469 (revoking requests for “all related documents”).

The Federal Rules of Civil Procedure, which *Brinks, supra*, notes are worthy guidelines, require that discovery be limited where, as here, “the burden or expense of the

proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." FRCP 26(b)(2)(C). The potential cost and burdensomeness of production regarding a number of the requests contained in Fred Meyer's subpoena greatly outweighs the relevancy and need for the information, absent clarification and limitations. Where this defense applies, the subpoena should be revoked or appropriately limited so that the subpoena is not unduly burdensome. *CNN America, Inc.*, 352 NLRB 675, 676 (2008) (describing balance between relevance and necessity of the information and the potential cost and burden of production).

### **III. The Portions Of the Subpoena Seeking Internal Bargaining Information and Confidential Internal Union Communications Should Be Revoked.**

Fred Meyer seeks the internal documented deliberations and communications of the Union regarding the negotiations for the 2007 and 2010 me-too agreements. Because requests such as these threaten the integrity of the collective bargaining process, courts have prohibited compulsory disclosure through the use of subpoenas in administrative proceedings. *See, Berbiglia, Inc.*, 233 NLRB 1476 (1977) (revoking broad subpoena that requested union notes describing bargaining); *Champ Corp.*, 291 NLRB 803, 817 (1988), *enfd.*, 933 F.2d 688 (9<sup>th</sup> Cir. 1990) (revoking subpoena that encompassed a demand for production of notes regarding collective bargaining, because the "failure to revoke the subpoena, insofar as it may be found relevant, would do unwarranted injury to the process of collective bargaining").

The *Berbiglia/Champ* privilege constitutes an exception, explicitly derived from federal labor policy, to the otherwise generally liberal standard of permissible requests to

protect the interests of both parties in the collective bargaining process. *See, Boise Cascade*, 279 NLRB 422 (1986) (permitting employer to refuse to provide requested information regarding a historical overview of its negotiations and negotiating strategy with a union). The Board adopted the following reasoning of the ALJ:

A proper bargaining relationship between the parties mandates that Respondent be able to confidentially evaluate possible interpretations of the existing labor agreement and that it be able to plan in confidence a strategy for altering or changing [terms and conditions regarding] its maintenance improvement program.

*Id.*, 279 NLRB at 432.

Under the foregoing authority, at a minimum, the following categories of internal union communications and bargaining information are protected from disclosure, and the Subpoena should be revoked or limited to exclude requests for:

- Documents revealing or touching upon in any way bargaining strategy;
- Communications by or among the Union's elected officials and staff unless otherwise public;
- Notes of internal meetings involving the Union's elected officials, staff, and membership;
- Any communications of any kind among persons who inform Local 367 bargaining strategy, including any related material;
- Draft proposals considered but not made, including any related material of any kind;
- Plans and efforts to engage in organizing or other protected union activities, or any material whatsoever related to these organizing efforts; or
- Communications with elected, community, religious or other leaders related to the Union's bargaining or organizing efforts.

As to any other responsive documents, Fred Meyer should describe the document and its need for it with particularity before the Union is required to comply.

### **RESPONSES TO NUMBERED PARAGRAPHS**

**REQUEST NO. 1: Copies of the Union's most recent constitution and bylaws.**

RESPONSE:

This Request should be revoked because it seeks information irrelevant to any claim or defense in this matter for the reasons set forth in Section I. *See also Burns Sec. Services*, 278 NLRB 565 (1986) (quashing request for same because the employer had asserted no facts supporting any connection to the constitution or bylaws); *In Re Interstate Builders, Inc.*, 334 NLRB 835 (2001) (revoked requests for constitution and bylaws because the requests were “too speculative in nature” and were only “a fishing expedition type of subpoena”); *Nat'l Beverages, Inc.*, 173 NLRB 936 (1968) (in refusal to bargain case, Board upheld ALJ’s revocation of employer subpoena seeking, inter alia, the union’s constitution and bylaws because “it was apparent that the issues relating to those documents had either been litigated earlier in the representation case, or they were immaterial and irrelevant to any issue in the complaint proceeding”).

**REQUEST NO. 2: All documents that refer or relate to the May 25, 2007, "me too" agreement between the Union and Allied Employers.**

RESPONSE:

This Request is unreasonably broad and unduly burdensome as set forth in Section II and protected under the *Berbiglia* standard described in Section III and should be revoked. Without waiving its objections, the Union produces the following documents Bates numbered UFCW000001 to UFCW000065 (communications between the Union and Allied Employers).

**REQUEST NO. 3: All documents that refer or relate to ratification of the May 25, 2007, "me too" agreement between the Union and Allied Employers.**

RESPONSE:

This Request is unreasonably broad and unduly burdensome as set forth in Section II and protected under the *Berbiglia* standard described in Section III and should be revoked. Without waiving the foregoing, the Union produces documents Bates numbered UFCW000046 to UFCW000065.

**REQUEST NO. 4: All documents evidencing communications between the Union and UFCW Local 21 regarding the May 25, 2007, "me too" agreement between the Union and Allied Employers.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. No such documents exist.

**REQUEST NO. 5: All documents evidencing communications between the Union and UFCW Local 81 regarding the May 25, 2007, "me too" agreement between the Union and Allied Employers.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. No such documents exist.

**REQUEST NO. 6: All documents evidencing communications between the Union and the UFCW International Union regarding the May 25, 2007, "me too" agreement between the Union and Allied Employers.**

RESPONSE:

The Request should be revoked for the reasons set forth in Section I, II, and III. One such document exists and is described on the Union's privilege log.

**REQUEST NO. 7: All documents evidencing communications distributed by the Union to its members regarding the May 25, 2007, "me too" agreement between the Union and Allied Employers.**

RESPONSE:

This Request is duplicative of Request #3 and should be revoked for the same reasons. See documents produced in response to Request #3.

**REQUEST NO. 8: All documents that refer or relate to the March 18, 2010, "me too" agreement between the Union and Allied Employers.**

RESPONSE:

This Request is unreasonably broad and unduly burdensome as set forth in Section II and protected under the *Berbiglia* standard described in Section III and should be revoked. Without waiving its objections, the Union produces documents Bates numbered UFCW000066 to UFCW000163 and UFCW000165 to UFCW000167.

**REQUEST NO. 9: All documents that refer or relate to ratification of the March 18, 2010, "me too" agreement between the Union and Allied Employers.**

RESPONSE:

This Request is unreasonably broad and unduly burdensome as set forth in Section II and protected under the *Berbiglia* standard described in Section III and should be revoked. Without waiving the foregoing, the Union produces documents Bates numbered UFCW000117 to UFCW000143 and UFCW000165 to UFCW000167.

**REQUEST NO. 10: All documents evidencing communications between the Union and UFCW Local 21 regarding the March 18, 2010, "me too" agreement between the Union and Allied Employers.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. No such documents exist.

**REQUEST NO. 11: All documents evidencing communications between the Union and UFCW Local 81 regarding the March 18, 2010, "me too" agreement between the Union and Allied Employers.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. No such documents exist.

**REQUEST NO. 12: All documents evidencing communications between the Union and the UFCW International Union regarding the March 18, 2010, "me too" agreement between the Union and Allied Employers.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. One email exchange may exist. The Union is locating it and will identify it on its privilege log upon its location.

**REQUEST NO. 13: All documents evidencing communications distributed by the Union to its members regarding the March 18, 2010, "me too" agreement between the Union and Allied Employers.**

RESPONSE:

This Request is unreasonably broad and unduly burdensome as set forth in Section II and protected under the *Berbiglia* standard described in Section III and should be revoked. Without waiving the foregoing, the Union produces documents Bates numbered UFCW000144 to UFCW000161.

**REQUEST NO. 14: All documents that refer or relate to bargaining regarding the Lacey and Tumwater nutrition employees referred to in paragraph 5 of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. Without waiving the foregoing objections, see responses to Request #8. Two other sets of documents exist: communications with individual members of the nutrition and playland workers, described on the Union's privilege log and attorney-client

communications between the Union and Schwerin Campbell Barnard Iglitzin and Lavitt or attorney-work product.

**REQUEST NO. 15: All documents evidencing communications between the Union and UFCW Local 21 regarding the Lacey and Tumwater nutrition employees referred to in paragraph 5 of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. No such documents exist.

**REQUEST NO. 16: All documents evidencing communications between the Union and UFCW Local 81 regarding the Lacey and Tumwater nutrition employees referred to in paragraph 5 of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. No such documents exist.

**REQUEST NO. 17: All documents evidencing communications between the Union and the UFCW International Union regarding the Lacey and Tumwater nutrition employees referred to in paragraph 5 of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. Two responsive documents are noted on the attached privilege log.

**REQUEST NO. 18: All documents evidencing communications distributed by the Union to its members regarding the Lacey and Tumwater nutrition employees referred to in paragraph 5 of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. There are no documents other than the individual documents referenced in the Union's response to Request #14 and those already produced in response to other subpoena requests.

**REQUEST NO. 19: All documents that refer or relate to bargaining regarding the University Place playland employees referred to in paragraph 6 of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. Without waiving the forgoing, see documents produced in response to Request 8.

**REQUEST NO. 20: All documents evidencing communications between the Union and UFCW Local 21 regarding the University Place playland employees referred to in paragraph 6 of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. No such documents exist.

**REQUEST NO. 21: All documents evidencing communications between the Union and UFCW Local 81 regarding the University Place playland employees referred to in paragraph 6 of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. No such documents exist.

**REQUEST NO. 22: All documents evidencing communications between the Union and the UFCW International Union regarding the University Place playland employees referred to in paragraph 6 of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. Two documents exist as described in the Union's response to Request #17.

**REQUEST NO. 23: All documents evidencing communications distributed by the Union to its members regarding the University Place playland employees referred to in paragraph 6 of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III. Without waiving the foregoing, see documents produced in response to Request # 8 and #9.

**REQUEST NO. 24: All documents that refer or relate to the 2007 negotiations held in Seattle, Washington, between UFCW Locals 21 and 81 and Allied Employers, and which were the subject of the May 25, 2007, "me too" agreement, including but not limited to all documents evidencing communications with UFCW Locals 21 and 81 and the UFCW International Union.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III and it is also duplicative of the Requests 2, 3, and 4. No such documents exist other than the documents identified in the earlier responses.

**REQUEST NO. 25: All documents evidencing communications distributed by the Union to its members regarding the 2007 negotiations held in Seattle, Washington, between UFCW Locals 21 and 81 and Allied Employers, and which were the subject of the May 25, 2007, "me too" agreement.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III and for the additional reason that it is duplicative of the Requests 8, 9, and 10 and 11. Without waiving the foregoing, see documents produced in response to Request #8 and #9.

**REQUEST NO. 26: All documents that refer or relate to the 2010 negotiations held in Seattle, Washington, between UFCW Locals 21 and 81 and Allied Employers, and which were the subject of the March 18, 2010, "me too" agreement, including but not limited to, all documents evidencing communications with UFCW Locals 21 and 81 and the UFCW International Union.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III and for the additional reason that it is duplicative of the Requests 8, 9, and 10 and 11. There are no such documents other than those previously identified.

**REQUEST NO. 27: All documents evidencing communications distributed by the Union to its members regarding the 2010 negotiations held in Seattle, Washington, between UFCW Locals 21 and 81 and Allied Employers, and which were the subject of the March 18, 2010, "me too" agreement.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II, and III and for the additional reason that it is duplicative of the Requests 8, 9, and 10 and 11. Without waiving the foregoing, see documents produced in response to Request #8 and #9.

**REQUEST NO. 28: All documents that refer or relate to the Union's Requests to bargain as described in paragraph 7 (b) of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section II and III. Without waiving the foregoing, other than communications with the law firm of Schwerin Campbell Barnard Iglitzin and Lavitt and to Region 19 as part of the investigation of this Complaint, than those previously produced.

**REQUEST NO. 29: All documents that refer or relate to the Union's Requests to bargain as described in paragraph 7(c) of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section II and III. Without waiving the foregoing, other than communications with the law firm of Schwerin Campbell Barnard Iglitzin and Lavitt and to Region 19 as part of the investigation of this Complaint, there are none other than those produced.

**REQUEST NO. 30: All documents evidencing communications distributed by the Union to its members regarding the Union's Requests to bargain as described in paragraph 7(b) of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II and III. Without waiving the foregoing, there are no other documents other than those produced or those to individual members as noted on the Union's privilege log.

**REQUEST NO. 31: All documents evidencing communications distributed by the Union to its members regarding the Union's Requests to bargain as described in paragraph 7(c) of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II and III. Without waiving the foregoing, there are no other documents other than those produced or those to individual members as noted on the Union's privilege log.

**REQUEST NO. 32: All documents that refer or relate to Allied Employers' presentation to the Union of a collective-bargaining agreement for the Expanded Grocery unit, as described in paragraph 7(d) of the Complaint, including but not limited to, all documents evidencing communications with UFCW Locals 21 and 81 and the UFCW International Union.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II and III. The Union is locating the responsive email that may be in its possession, but will likely assert that this document is privileged pursuant to Section III above and will log it.

**REQUEST NO. 33: All documents that refer or relate to Allied Employers' presentation to the Union of a collective-bargaining agreement for the Expanded CCK unit, as described in paragraph 7(e) of the Complaint, including but not limited to, all documents evidencing communication with UFCW Locals 21 and 8] and the UFCW International Union.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II and III. Without waiving the foregoing, there are no responsive documents other than those produced or identified or communications with the law firm of Schwerin Campbell Barnard Iglitzin and Lavitt or to Region 19 as part of the investigation of this Complaint.

**REQUEST NO. 34: All documents evidencing communications distributed by the Union to its members regarding Allied Employers' presentation to the Union of a collective bargaining agreement for the Expanded Grocery unit, as described in paragraph 7(d) of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II and III. Without waiving the foregoing, there are no responsive documents other than those already produced or identified or communications with the law firm of Schwerin Campbell Barnard Iglitzin and Lavitt and to Region 19 as part of the investigation.

**REQUEST NO. 35: All documents evidencing communications distributed by the Union to its members regarding Allied Employers' presentation to the Union of a collective bargaining agreement for the Expanded CCK unit, as described in paragraph 7(e) of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II and III. Without waiving the foregoing, there are no other documents other than those produced or those to individual members as identified in the Union's log.

**REQUEST NO. 36: All documents that refer or relate to Carl Wojciechowski's letter dated January 5, 2011, as described in paragraph 8 of the Complaint, including but not limited to, documents evidencing communications distributed by the Union to its members.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II and III. Without waiving the foregoing, there are no responsive documents other than communications with the law firm of Schwerin Campbell Barnard Iglitzin and Lavitt and to Region 19 as part of the investigation of this Complaint and the documents already produced or identified in the Union's log.

**REQUEST NO. 37: All documents that refer or relate to the ratification bonuses referred to in paragraphs 8 and 9 of the Complaint, including but not limited to, documents evidencing communications distributed by the Union to its members.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II and III. Without waiving the foregoing, there are no responsive documents other than communications with the law firm of Schwerin Campbell Barnard Iglitzin and Lavitt and to Region 19 as part of the investigation of this Complaint and the documents already produced or identified.

**REQUEST NO. 38: All documents supporting the argument that the Lacey and Tumwater nutrition and University Place playland employees are entitled to receive the lump sum ratification bonuses referred to in paragraph 9(e) of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II and III. There are not other documents other than communications with the law firm of Schwerin Campbell Barnard Iglitzin and Lavitt and to Region 19 as part of the investigation of this Complaint other than those that have been provided or identified.

**REQUEST NO. 39: All documents supporting the argument that the Lacey and Tumwater nutrition and University Place playland employees are entitled to receive the July 2011 hourly wage increase referred to in paragraph 9(e) of the Complaint.**

RESPONSE:

This Request should be revoked for the reasons set forth in Section I, II and III. There are not other documents other than communications with the law firm of Schwerin Campbell Barnard Iglitzin and Lavitt and to Region 19 as part of the investigation of this Complaint other than those that have been provided or identified.

**REQUEST NO. 40: All documents that refer or relate to the unfair labor practice charges filed by the Union with the National Labor Relations Board in Case Nos. 19-CA-32908 and 19-CA-33052. (This Request does not seek production of any affidavit prepared by an agent of the National Labor Relations Board, but does seek production of any and all documents submitted by the Union to the National Labor**

**Relations Board in support of the unfair labor practice charges filed in Case Nos. 19-CA-32908 and 19-CA-33052.)**

RESPONSE:

This Request should be revoked for the reasons set forth in Sections II and III.

DATED this 19<sup>th</sup> day of July, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on this 19<sup>th</sup> day of July, 2012, I caused the foregoing Petition to Revoke Subpoena Duces Tecum No. B-648027 to be filed electronically with the Regional Director at [www.nlr.gov](http://www.nlr.gov), and caused true and correct copies of the same to be sent via email and US First Class Mail to:

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