

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

CEMEX, INC.

and

**Cases 28-CA-22165
28-CA-22169
28-CA-22220
28-CA-22313
28-CA-22409
28-CA-22534
28-CA-22699
28-CA-22711
28-CA-22726
28-CA-22967**

**GENERAL TEAMSTERS (EXCLUDING
MAILERS), STATE OF ARIZONA,
LOCAL UNION NO. 104, AN AFFILIATE
OF THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

CEMEX, INC.

and

**Cases 28-CA-22267
28-CA-22419
28-CA-22823
28-CA-22894**

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 428, AFL-CIO**

**ACTING GENERAL COUNSEL'S OPPOSITION
TO RESPONDENT'S REQUEST FOR SPECIAL PERMISSION
AND APPEAL OF ADMINISTRATIVE LAW JUDGE RULING**

Pursuant to § 102.26 of the Board's Rules and Regulations, Counsel for the Acting General Counsel (CAGC), submits the following opposition to the request filed by Respondent CEMEX, Inc. (Respondent or CEMEX) that the Board grant it special permission to appeal one

aspect of the September 13, 2010¹, protective order issued by Administrative Law Judge Burton Litvack (ALJ or ALJ Litvack) in the above-referenced cases. (A copy of that order, marked at hearing as “ALJ 2”, is attached as Exhibit A.) Since the September 14 filing of Respondent’s Special Appeal, ALJ Litvack has modified his protective order (which has been made part of the record in the underlying hearing marked as ALJ 3, a copy of which is attached as Exhibit B.) By its Special Appeal, Respondent asks the Board to prohibit the Charging Parties in these proceedings from ever seeing Respondent’s documents relating to “customer identity, order histories, product volumes purchased, locations delivered to, and pricing data, as well as non-union wage data” and other documents considered confidential (Respondent’s Special Appeal at 2). In fact, Respondent wants the same “attorneys-only” restriction extended to all alleged confidential information which has already been placed on Respondent’s profit and loss information. The Board should reject Respondent’s Special Appeal for the reasons stated below.

I. The ALJ’s September 13 And 14 Protective Orders

The entire history of this matter has been recounted in the CAGC’s Special Appeal filed with the Board on August 16, and will not be repeated in its entirety here.² In sum, Counsel for the CAGC served its first subpoena duces tecum in this matter on September 4, 2009 (September 2009 Subpoena). Due to Respondent’s refusal to produce various categories of documents requested, the General Counsel sought enforcement of the September 2009 Subpoena in federal district court. That matter has been closed and the hearing before the ALJ resumed in July. After the district court proceedings, CAGC caused new subpoenas to be served on Respondent. At the resumption of the hearing before the ALJ, the ALJ granted in part and denied in part Respondent’s Motion for Protective Order, which precluded the Charging Parties, their agents, or

¹ All dates refer to calendar year 2010, unless otherwise indicated.

² Many of the arguments, including particularly those on the Charging Parties’ due process rights, in CAGC’s Special Appeal are relevant and apply to this Opposition. See General Counsel’s Special Appeal at 9-10.

representatives from reviewing “Confidential Information” produced in response to the September 2009 Subpoena. As explained in CAGC’s Special Appeal and below, the ALJ modified his previous October 2009 protective order which entirely precluded the Charging Parties or their attorneys from reviewing “Confidential Information” in this proceeding, though CAGC maintained its objections to certain provisions of the ALJ’s protective order which are the subject of CAGC’s currently pending Special Appeal.

Since CAGC filed its Special Appeal in August, the hearing in these matters resumed before ALJ Litvack on September 13. At the September 13 hearing, the ALJ signed a protective order (Exhibit A), to which Respondent has filed this Special Appeal. This new protective order modifies and supersedes the protective order issued by the ALJ on October 6, 2009, and allows one, non-attorney Charging Party representative and the Charging Party’s counsel-of-record, to see certain Confidential Information (other than profit and loss documents).³ As explained in CAGC’s Special Appeal, this restriction violates the Charging Parties’ due process rights and limits the ability of the General Counsel and the Charging Parties’ counsel to understand and use all of the Confidential Information. Notwithstanding the ALJ’s modifications to the protective order, it is CAGC’s position that certain aspects of the protective order, continue to be inappropriate, overly restrictive, unwarranted, and unduly prohibits CAGC’s prosecution of the underlying unfair labor practice matter. However, Respondent, in this latest Special Appeal, is now asking the Board to go backwards and prohibit any Charging Party representative, except counsel, from reviewing *any* Confidential Information, not just profit and loss information.

³ The following day, September 14, the ALJ further modified the protective order, and CAGC filed a Supplemental Notice to the Board of this modified order (ALJ 3). However, the restrictions on who among the Charging Parties may review Confidential Information remain the same.

II. The Board Should Reject Respondent's Suggestion that the Earlier District Court Proceedings Have Any Bearing on the July 2010 Subpoena

In support of its Special Appeal, Respondent suggests that the District Court has already granted a protective order that is controlling as to CAGC's subpoenas in this matter. Respondent is incorrect.

In the course of the district court proceedings, the district court instructed the General Counsel that its subpoenas should more clearly identify what documents the government is requesting.⁴ Following the Court's direction, CAGC withdrew its September 2009 Subpoena and issued a new subpoena duces tecum on July 6 (July 2010 Subpoena), using the Court's instructions as a guide. Because CAGC withdrew its September 2009 Subpoena, the ALJ concluded that the matter before the district court "became moot." (Tr. 821:9-12). Prior to CAGC withdrawing the September 2009 Subpoena, the Court, on February 1, issued a protective order (February 2010 Protective Order) for two categories of documents in the now-withdrawn subpoena.

In its Special Appeal, Respondent references the district court's February 2010 Protective Order, which has no bearing on the July 2010 Subpoena and ALJ Litvack's protective order at issue here. Despite Respondent's suggestion that the district court issued an "attorney's only" protective order for a broad swath of documents, including non-union wage data, in reality the protective order granted by the district court on February 1, related to just two items in the September 2009 Subpoena, neither of which includes non-union wage data.⁵ Even the district

⁴ The district court, for example, suggested that "if one wants payroll records they can ask for payroll records." (*NLRB v. Cemex, Inc.*, No. 2:09-cv-2546-PHX-JAT, Doc. 33 (Transcript of Jan. 22, 2010 Proceedings) at 24).

⁵ The district court's protective order applied to Requests 23 and 28 of the September 2009 Subpoena. Request 23 asked for "[s]uch documents as will show the nature, identity and volume of work assigned to each of Respondent's Arizona facilities." Request 28 sought "[d]ocuments showing the profit and loss margins of each of Respondent's Arizona facilities since January 1, 2006.

court rejected Respondent's attempt to widen the scope of the February 2010 Protective Order or to apply that order to any subsequent subpoenas issued in this proceeding:

[T]he Court disagrees with CEMEX's interpretation of the Court's February 1[, 2010] Order. The Court granted the protective order with regards to Items 23 and 28 of the September 4[, 2009] subpoena. The Court did not make any general sweeping statements that the February 1 Order applied to all future subpoenas, or any and all information that might be considered as competitively and financially sensitive information. While the Court did state that its February 1 Order "will continue to be binding throughout and after the final disposition of this Action," (Doc. 32 at p. 7) it is clear from the context of the Order that the Court was referring to those documents produced under Items 23 and 28 of the September 4[, 2009] subpoena –not all possible future subpoenas that might be issued in the case. As such, the Court finds that the protective order issued as part of the February 1 Order is only applicable to the September 4 subpoena, and not all future subpoenas that might arise during the course of this case.

NLRB v. Cemex, Inc., No. 2:09-cv-2546-PHX-JAT (D. Ariz. Sept. 3, 2010), Order at 2-3, a copy of which is attached as Exhibit C; citation also at 2010 WL 3528569, at *1 (D. Ariz. Sept. 3, 2010). As to the current July 2010 Subpoena, the district court found that it lacks subject matter jurisdiction to apply its February 2010 Protective Order to the July 2010 Subpoena. Further, the district court found that Respondent has failed to exhaust its administrative remedies relating to the July 2010 Subpoena and that Respondent has not attempted "to seek special leave to appeal to the NLRB, a procedure expressly provided for under the NLRB's Rules and Regulations. 29 C.F.R. § 102.26." *Id.* at 2. Thus, the district court's rulings as to the September 2009 Subpoena, while indicative of the Court's views on protecting confidential information, were not supported by any significant reasoning⁶, would have had the effect of denying the Charging Parties due process in the Board proceeding and, in any event, have no controlling force on the July 2010 subpoena, and the Board should reject Respondent's suggestion otherwise.

⁶ In fact, the District Court did not cite any case law or other authority for the specific ruling that the Charging Party Unions should be barred from the hearing room while Confidential Information was being discussed.

III. Respondent's Proposed Protective Order Violates the Charging Parties' Due Process Rights

Respondent's proposed order – legally impermissible and wreaking harmful changes on Board proceedings – is also addressed by CAGC in its pending Special Appeal. In that appeal, CAGC addressed the negative impact on a Charging Party's due process rights under Board law when that Charging Party is denied full participation in an unfair labor practice hearing. See General Counsel's Special Appeal at 9-10. In addition, Respondent's attempt to prevent the Charging Party Unions from seeing its alleged confidential documents precludes the Charging Parties from fully presenting their cases. The Board has long recognized the necessity of a Charging Party's full participation in Board proceedings, noting a "loss of public confidence in the Board's processes," if, for instance, a discriminatee witness is excluded from the hearing during times other than when he would be privy to a witness' testimony on the same subject. *Unga Painting Corp.*, 237 NLRB 1306, 1308 (1978).

Here, Respondent attempts to preclude the Charging Party Union representatives from seeing Respondent's alleged confidential information. Initially, we note that because they deliver the cement product to Respondent's customers, it is very likely that at least some of the Charging Party Union representatives are already aware of at least some of Respondent's alleged "confidential" customer information. In any event, access to such information, just like testimony, may not only be key to the presentation of the Charging Parties' cases, but would likely also assist CAGC in the presentation of its case. On a similar note, in the context of an EEOC investigation, the Supreme Court has found that early disclosures of evidence to a Charging Party can speed the agency's investigation, make settlement "far more likely," and help avoid "pointless litigation" by providing the Charging Party with "adequate information in assessing the feasibility of litigation." *EEOC v. Associated Dry Goods Corp.*, 449 U.S. 590, 598,

600-603 (1981). Likewise, here, the same benefits will accrue if the Charging Parties are permitted full participation in these proceedings and are not excluded from seeing important evidence that will permit a fair resolution of their charges. *Id.* at 601 (discussing a Charging Party's need to "ha[ve] enough information to be able to assess the strengths and weaknesses of his opponent's case as well as his own.").⁷

Here, the ALJ correctly recognized in the July 2010 hearing the fundamental rights of the Charging Parties to fully participate in hearings of their unfair labor practice charges. In fact, while the district court prohibited disclosure of certain documents to the Charging Parties *or* their agents or representatives, ALJ Litvack expressly disagreed with this prohibition at the hearing on July 20: "[B]luntly put, the Charging Party and its counsel and representatives have a full right to participate in this hearing. And until the Board tells me that they don't, I will permit the Charging Parties, its attorneys and its representatives to view material even of a confidential nature." (Tr. 719:24-720:4). Despite this recognition of the Charging Parties' rights, ALJ Litvack's current protective order continues to deny representatives of the Charging Parties, except for their counsel of record, from being present when reviewing profit and loss information at the hearing. Now, Respondent wants to expand further that same prohibition on the Charging Parties' right to review and assist their counsel and the Acting General Counsel in interpreting all alleged "Confidential Information." The Board should reject this broad strike at the Charging Parties' due process rights and grant the representatives of the Charging Parties, as well as their counsel of record, the opportunity to fully participate in the litigation of their cases.

⁷ Indeed, here, the Charging Parties have reported that they cannot afford to have counsel present at most of the hearings, increasing the need for the Charging Party Unions themselves to be able to view relevant evidences and assess their case. While Teamsters' counsel has appeared intermittently at some of the ALJ hearings in July, Teamsters' counsel has not appeared during any of the September hearings. The Operating Engineers' Business Agent has appeared intermittently at hearings, and pleadings are served upon the Operating Engineers' counsel, but the Operating Engineers' counsel has not participated in the hearings in any substantive manner.

IV. Conclusion

For the reasons set forth above, the undersigned requests that Respondent's Request for Special Permission and Appeal of Administrative Law Judge Ruling be denied.

Dated at Phoenix, Arizona, this 27th day of September 2010.

/s/Mary G. Davidson
Mary G. Davidson
John G. Giannopoulos
Christopher J. Doyle
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EXHIBIT A

EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES – SAN FRANCISCO BRANCH**

CEMEX, INC.

and

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28-CA-22726
28-CA-22967**

**GENERAL TEAMSTERS (EXCLUDING
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UNION NO. 104, AN AFFILIATE OF THE
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

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and

**Cases 28-CA-22267
28-CA-22419
28-CA-22781
28-CA-22823
28-CA-22894**

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 428, AFL-CIO**

PROTECTIVE ORDER

The undersigned Administrative Law Judge finds that, for good cause shown, a Protective Order should issue to protect and control the production and use of Respondent's confidential and commercially-sensitive information throughout and after the completion of this action. Accordingly, the Counsel for General Counsel, its staff, the parties, their representatives, attorneys, and agents, witnesses, and observers shall comply with the following:

1. Confidential information produced by Respondent shall be secured and maintained by Counsel for General Counsel in a manner so as to avoid disclosure or dissemination of its

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contents to any person not identified in this Order or in a manner not specifically authorized by this Order.

2. To control the significant potential for damaging disclosure or dissemination of Respondent's Confidential Information by the adverse Charging Parties, only Respondent, witnesses (if necessary), the Counsel for General Counsel, the Charging Parties' counsel-of-record, and a single, non-attorney Charging Party representative designated by each of the Charging Parties' counsel-of-record may see or use Confidential Information, and only in the Hearing Room or the Counsel for the General Counsel's offices, and only to prepare to examine witnesses, to prepare aides for witness examination, to create possible documentary evidence, to examine/cross-examine witnesses, or to draft post-hearing or appellate briefs. Witnesses, the Counsel for General Counsel, Charging Party attorneys, and their designated representative shall not otherwise attempt to make copies, notes, or record Confidential Information, and shall not remove, use, or disclose Confidential Information for any purpose outside the Hearing Room or Counsel for General Counsel offices. The undersigned ALJ will instruct witnesses regarding this Order at the time they are shown Confidential Information.

3. Notwithstanding the foregoing, with regard to any Confidential Information that may involve profit and loss information, such Confidential Information shall be viewed or used during and after the Hearing only by witnesses (if necessary), Respondent, the Counsel for the General Counsel, and counsel-of-record for each of the Charging Parties. Likewise, if it becomes necessary for Counsel for the General Counsel or counsel-of-record for either of the Charging Parties to view job ticket records described in paragraphs 21(a)-(d), 33-35, 38 or 39 of the subpoenas duces tecum, said documents shall be made available by Respondent at its facilities for viewing and secured copying only by said attorneys, if desired.

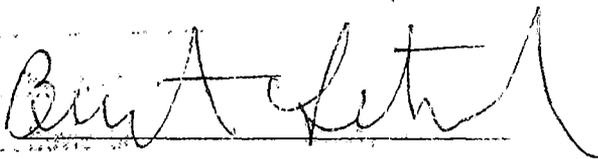
4. Respondent shall only produce one copy of the Confidential Information, if required, by an un-revoked or modified subpoena, excepting that Respondent need only make Job Tickets available for viewing on-site due to their voluminous nature.

5. Members of the public and all those not specifically allowed access to Confidential Information under this Order shall be excluded from the hearing at times when the Confidential Information is discussed.

6. Respondent may move to place any Confidential Information (either documents or testimony) under seal at the time offered at trial.

7. This Order shall continue to be binding throughout and after the final disposition of this action. All Confidential Information shall be used only for the prosecution and/or defense of this action. Within fifteen days (15) after receiving notice of a ruling by the undersigned, Counsel for General Counsel shall return all Confidential Information (including all copies, summaries, and excerpts) to Respondent's Counsel, except Confidential Information Exhibits admitted by the undersigned into evidence in this matter, which shall be returned to CEMEX's counsel within fifteen (15) days after the exhaustion of all appeals, if any.

Ordered this 13th day of Sept., 2010



Administrative Law Judge Burton Litvack

EXHIBIT B

EXHIBIT B

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES – SAN FRANCISCO BRANCH**

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28-CA-22894**

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 428, AFL-CIO**

AMENDED PROTECTIVE ORDER

The undersigned Administrative Law Judge Amends the Protective Order issued September 13, 2010, by deleting the “~~stri~~ke~~through~~” provisions and adding the underlined provision, as further set forth below.

The undersigned Administrative Law Judge finds that, for good cause shown, a Protective Order should issue to protect and control the production and use of Respondent's confidential and commercially-sensitive information throughout and after the completion of this

action. Accordingly, the Counsel for General Counsel, its staff, the parties, their representatives, attorneys, and agents, witnesses, and observers shall comply with the following:

1. Confidential information produced by Respondent shall be secured and maintained by Counsel for General Counsel in a manner so as to avoid disclosure or dissemination of its contents to any person not identified in this Order or in a manner not specifically authorized by this Order.
2. To control the significant potential for damaging disclosure or dissemination of Respondent's Confidential Information by the adverse Charging Parties, only Respondent, witnesses (if necessary), ~~the Counsel for General Counsel~~, the Charging Parties' counsel-of-record, and a single, non-attorney Charging Party representative designated by each of the Charging Parties' counsel-of-record may see or use Confidential Information, and only in the Hearing Room or the Counsel for the General Counsel's offices, and only to prepare to examine witnesses, to prepare aides for witness examination, to create possible documentary evidence, to examine/cross-examine witnesses, or to draft post-hearing or appellate briefs. Witnesses, ~~the Counsel for General Counsel~~, Charging Party attorneys, and their designated representatives shall not otherwise attempt to make copies, notes, or record Confidential Information, and shall not remove, use, or disclose Confidential Information for any purpose outside the Hearing Room or Counsel for General Counsel offices. The undersigned ALJ will instruct witnesses regarding this Order at the time they are shown Confidential Information.
3. Notwithstanding the foregoing, with regard to any Confidential Information that may involve profit and loss information, such Confidential Information shall be viewed or used during and after the Hearing only by witnesses (if necessary), Respondent, the Counsel for the General Counsel, and counsel-of-record for each of the Charging Parties. Likewise, if it becomes necessary for Counsel for the General Counsel or counsel-of-record for either of the

Charging Parties to view job ticket records described in paragraphs 21 (a)-(d), 33-35, 380r 39 of the subpoenas duces tecum, said documents shall be made available by Respondent at its facilities for viewing and secured copying only by said attorneys, if desired.

4. Respondent shall only produce one copy of the Confidential Information, if required, by an un-revoked or modified subpoena, excepting that Respondent need only make Job Tickets available for viewing on-site due to their voluminous nature.

5. Members of the public and all those not specifically allowed access to Confidential Information under this Order shall be excluded from the hearing at times when the Confidential Information is discussed.

6. Respondent may move to place any Confidential Information (either documents or testimony) under seal at the time offered at trial.

7. This Order shall continue to be binding throughout and after the final disposition of this action. All Confidential Information shall be used only for the prosecution and/or defense of this action. Within fifteen days (15) after receiving notice of a ruling by the undersigned, Counsel for General Counsel shall return all Confidential Information (including all copies, summaries, and excerpts) to Respondent's Counsel, except Confidential Information Exhibits admitted by the undersigned into evidence in this matter, which shall be returned to CEMEX's counsel within fifteen (15) days after the exhaustion of all appeals, if any.

Ordered this 15th day of Sept., 2010

A handwritten signature in cursive script, appearing to read "Burton Litvack", written over a horizontal line.

Administrative Law Judge Burton Litvack

EXHIBIT C

EXHIBIT C

Westlaw

Page 1

Slip Copy, 2010 WL 3528569 (D.Ariz.)
(Cite as: 2010 WL 3528569 (D.Ariz.))

Only the Westlaw citation is currently available.

**This decision was reviewed by West editorial staff
and not assigned editorial enhancements.**

United States District Court,
D. Arizona.
NATIONAL LABOR RELATIONS BOARD, Applicant,
v.
CEMEX, INC., Respondent.
No. 2:09-cv-2546-PHX-JAT.

Sept. 3, 2010.

Chris J. Doyle, Mara-Louise Anzalone, Paul R. Irving, National Labor Relations Board, Phoenix, AZ, Mark G. Eskenazi, Special Litigation, National Labor Relations Board, Washington, DC, for Applicant.

Elizabeth Mary Townsend, Steven Dean Wheelless, Steptoe & Johnson LLP, Phoenix, AZ, Arthur Tracy Carter, Haynes & Boone, Dallas, TX, for Respondent.

ORDER

JAMES A. TEILBORG, District Judge.

*1 Pending before the Court is Respondent CEMEX, Inc.'s Motion to Confirm Validity of the Court's Protective Order (Doc. 45). For the reasons that follow, the Court denies CEMEX's motion.

On June 30, 2009, the National Labor Relation Board's ("NLRB") General Counsel issued and served on CEMEX a Fourth Amended Consolidated Complaint and a notice of hearing charging CEMEX with violating various statutes for, *inter alia*, diverting work from its union-represented employees to its non-unionized workforce and closing two of its unionized facilities. On September 4, 2009, the NLRB issued a subpoena duces tecum to CEMEX's Custodian of Records. Upon CEMEX's refusal to produce documents the NLRB took action in this Court on October 5, 2009 for the enforcement of the September 4, 2009 subpoena duces tecum against CEMEX.

On February 1, 2010, this Court entered an Amended Order granting CEMEX's request for a protective order as to Items 23 and 28 of the September 4 subpoena, which related to competitively and financially sensitive information and customer information. During a January 22, 2010 hearing, the Court denied the majority of the NLRB's requests relating to the September 4 subpoena.^{FN1}

^{FN1}. For a review of the Court's particular orders regarding the September 4 subpoena, see Doc. 33.

On July 6, 2010, the NLRB issued a new subpoena in order to cure the defects contained in the September 4 subpoena as outlined during the January 22 hearing. CEMEX now urges this Court to apply language contained in the February 1 Order to limit the July 6 subpoena.

The NLRB argues that this Court lacks subject matter jurisdiction to consider CEMEX's request. The Court agrees. Congress vested the ability to enforce or otherwise initiate actions involving the NLRB subpoenas solely with the NLRB. 29 U.S.C. § 161(2). CEMEX is given the ability to oppose any subpoena issued by the NLRB. However, as was the case with the initial September 4 subpoena, CEMEX must await the NLRB's decision to seek enforcement of the subpoena. CEMEX is not free to initiate a proceeding in this Court relating to a subpoena issued by the NLRB. While such a procedural framework may not be ideal or always necessarily efficient, the Court is bound by this framework as established by Congress.

Moreover, it appears that CEMEX has also failed to exhaust its administrative remedies. Based upon the record currently before the Court, it does not appear that CEMEX attempted to seek special leave to appeal to the NLRB, a procedure expressly provided for under the NLRB's Rules and Regulations. 29 C.F.R. § 102.26.

In any event, even if the Court properly has subject matter jurisdiction and CEMEX properly exhausted its administrative remedies, the Court disagrees with CEMEX's interpretation of the Court's February 1

Slip Copy, 2010 WL 3528569 (D.Ariz.)
(Cite as: 2010 WL 3528569 (D.Ariz.))

Order. The Court granted the protective order with regards to Items 23 and 28 of the September 4 subpoena. The Court did not make any general sweeping statements that the February 1 Order applied to all future subpoenas, or any and all information that might be considered as competitively and financially sensitive information. While the Court did state that its February 1 Order "will continue to be binding throughout and after the final disposition of this action," (Doc. 32 at p. 7) it is clear from the context of the Order that the Court was referring to those documents produced under Items 23 and 28 of the September 4 subpoena-not all possible future subpoenas that might be issued in the case. As such, the Court finds that the protective order issued as part of the February 1 Order is only applicable to the September 4 subpoena, and not all future subpoenas that might arise during the course of this case.

*2 Accordingly,

IT IS ORDERED that Respondent CEMEX, Inc.'s Motion to Confirm Validity of the Court's Protective Order (Doc. 45) is denied.

D.Ariz.,2010.
N.L.R.B. v. CEMEX, Inc.
Slip Copy, 2010 WL 3528569 (D.Ariz.)

END OF DOCUMENT

CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S REQUEST FOR SPECIAL PERMISSION AND APPEAL OF ADMINISTRATIVE LAW JUDGE RULING in CEMEX, INC., Cases 28-CA-22165 et al., was served by E-Gov, E-Filing, e-mail and hand delivery on this 27th day of September 2010, on the following:

Via E-Gov, E-Filing:

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Local 428, AFL-CIO
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/s/ John T. Giannopoulos

John T. Giannopoulos

Chris J. Doyle

Mary G. Davidson

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