

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

KAISER FOUNDATION HOSPITALS

and

Cases 31-CA-089178 and
31-CA-091298

NATIONAL UNION OF HEALTHCARE WORKERS

**ORDER
REFERRING PETITION TO REVOKE SUBPOENA DUCES TECUM**

Counsel for the Acting General Counsel's Petition to Revoke Subpoena Duces Tecum having been filed with the Regional Director on March 21, 2013, IT IS HEREBY ORDERED that the same be, and it hereby is, referred to the Associate Chief Administrative Law Judge, Division of Judges, National Labor Relations Board, San Francisco, California.

Dated: March 21, 2013.


Olivia Garcia, Regional Director
National Labor Relations Board
Region 21

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COUNSEL FOR THE ACTING GENERAL COUNSEL'S
PETITION TO REVOKE PETITION DUCES TECUM

Pursuant to Board Rules and Regulations 102.31(b), comes now Counsel for the Acting General Counsel who files this petition to revoke subpoena duces tecum No. B-712398, which was dated March 11, 2013 and received by the offices of Region 21 on March 18, 2013. A copy of this subpoena is attached as Exhibit A.

1. On March 18, 2013, Region 21 received via U.S. Mail, a copy of a subpoena duces tecum from Karen Rooney, counsel for Kaiser Foundation Hospitals, herein called Respondent. Respondent's subpoena, addressed to Cecelia Valentine, Counsel for the Acting General Counsel, and directed to the Custodian of Records for NLRB, Region 21, seeks documents produced and obtained in connection with Region 31's investigation of the underlying charges.

2. The General Counsel submits that Respondent's subpoena should be revoked on the following grounds:

(a) Respondent has failed to comply with the procedural requirements of the Board's Rules and Regulations regarding production of such documents.

Under Section 102.118 of the Rules and Regulations of the National Labor Relations Board, herein called the Rules and Regulations, an agent of the Board may not produce any files or records contained in any case file without the written consent of the General Counsel of the National Labor Relations Board.

On March 19, 2013, Counsel for the Acting General Counsel Cecelia Valentine telephoned Respondent attorney Karen Rooney to explain the appropriate procedure for subpoenaing documents in the possession of a Regional office, to inform Ms. Rooney that Respondent did not comply with the requirements of Section 102.118, and to inquire whether Respondent wished to withdraw its subpoena. Ms. Rooney answered that Respondent would not withdraw its subpoena.

Because Respondent has failed to establish that it has complied with the above Rules and Regulations, the subpoena should be revoked in its entirety.

(b) The documents requested by the Respondent are confidential and may not be produced pursuant to a subpoena.

Any affidavits, declarations, statements, and the like, submitted to the National Labor Relations Board during the course of an investigation, were provided with confidentiality protections and assurances. Disclosure of witness statements to a Respondent is not mandated unless and until such time as the affiant provides testimony at a hearing.

Because Respondent seeks information submitted to Region 31 in confidence, the subpoena should be revoked in its entirety. *NLRB v. Robbins Tire and Rubber Co.*, 473 U.S. 214 (1978), *NLRB v. Vapor Blast Mfg. Co.*, 287 F. 2d 402, 405-06 (7th Cir. 1961), cert. denied, 368 U.S. 823 (1961); *Raser Training Corp. v. NLRB*, 276 F. 2d 80, 83 (6th Cir. 1960), cert. denied, 363 U.S. 830 (1960); *Intertype v. NLRB*, 401 F. 2d 41 (4th Cir. 1968), cert. denied, 393 U.S. 1049

(1969); see also, *Wellman Industries, Inc. v. NLRB*, 490 F. 2d 427 (4th Cir. 1974), cert denied, 419 U.S. 834 (1974).

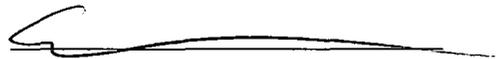
(c) Respondent's Subpoena Seeks Information Privileged Against Disclosure

Respondent's subpoena seeks information that is privileged from disclosure by the attorney work product privilege. Respondent's subpoena seeks, among other things, documents which constitute investigative notes and materials that are contained within the Regional investigation file, which were prepared by Board attorneys in anticipation of litigation, and which reflect Board attorneys' mental impressions, opinions, conclusions, and legal theories *Hickman v. Taylor*, 329 U.S. 495 (1947). *Michael's Piano, Inc. v. FTC*, 18 F.3d 138, 146 (2d Cir. 1994), cert. denied 513 U.S. 1015 (1994); *In re Grand Jury Proceedings v. U.S.*, 727 F.2d 941, 945 (10th Cir. 1984), cert. denied 469 U.S. 819 (1984). Respondent is not entitled to receive this attorney work product, and the subpoena should be revoked, in its entirety, on this basis.

(d) Finally, Respondent's subpoena is overbroad, unduly burdensome, and seeks irrelevant information.

3. For the above-noted reasons, Counsel for the Acting General Counsel respectfully requests that Respondent's subpoena duces tecum, No. B-712398, be revoked in its entirety.

DATED at Los Angeles, California, this 21st day of March, 2013



Cecelia Valentine
Counsel for the Acting General Counsel
National Labor Relations Board, Region 21

Exhibit A

Respondent's Subpoena Duces Tecum No. B-712398

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Custodian of Records NLRB, Region 21, 888 S. Figueroa Street,
9th Floor, Los Angeles, CA 90017

As requested by Karen A. Rooney, Esq.

whose address is 11150 W. Olympic Blvd., Suite 900, Los Angeles, CA 90064
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative
Law Judge

_____ of the National Labor Relations Board
at a hearing to be held at Region 21, 888 S. Figueroa St., 9th Floor,
in the City of Los Angeles, CA 90017 Hearing Room 902

on the 25th day of March 2013 at 1:00 (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in case 31-CA-089178, Kaiser Foundation Hospitals

(Case Name and Number)

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

See Attachment A

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 - 712398

Issued at Los Angeles, California

this 11th day of March

2013



[Signature]
Chairman, National Labor Relations Board

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 TO SUBPOENA DUCES TECUM (BOARD)

You are hereby required to bring with you and produce at said time and place the following books, records, correspondence and documents that are in your possession or under your custody or control:

DEFINITIONS/INSTRUCTIONS

1. "Document" or "documents" means and includes writings, drawings, graphs, charts, data compilations, tape recordings, video tapes, and handwritten matter of whatever character, including, but not limited to, letters, memoranda, telegrams, periodicals, pamphlets, reports, records, studies, papers, ledger, written statements of witnesses or persons having knowledge of the relevant facts, catalogues, handbooks, brochures, diaries, and journals, including carbon or photographic copies of any such material. The term "document" also includes, without limitation, all tangible reproductions, books, papers, transcripts, correspondence, contracts, memoranda, drafts, invoices, summaries, notes and notations (long hand or typewritten), and references to or reflections of records of any statement, conversation, telephone call, meeting, event, or other oral communication or activity.

2. "In the possession of, or under the custody or control of" means that a document is deemed to be in the possession of, or under the custody or control of, claimant or claimant's agents or representatives if it is in the physical custody of claimant or claimant's agents or representatives or if it is in the physical custody of any other person or entity and claimant or claimant's agents or representatives (a) own such document in whole or in part, (b) has a right by contract, statute or otherwise, to use, inspect, examine or copy such document on any terms, (c) has an understanding, express or implied, that it may use, inspect, examine or copy such document on any terms, or (d) has, as a practical matter, been able to use, inspect, examine or copy such document when it sought to do so.

3. "Relate," "relating to," "related to" and "evidence" mean concerning, referring to, pertaining to, reflecting, evidencing, and/or supporting.

4. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be construed to be outside of the scope.

5. "Communication" or "communications" shall mean and refer to any meeting, conversation (face-to-face, telephonic, or otherwise), discussion, telex message, cable, correspondence, message, tape-recorded message or other occurrences in which thoughts, opinions, or information are transmitted between or among two or more persons or between or among one or more persons and any electronic, photographic, or mechanical device or devices for receiving, transmitting, or storing data or other information.

6. The term "identify," as it relates to a person, shall mean to state the person's name, address, telephone number, email address and/or any other means of locating him or her.

7. The terms "charge" shall refer to case 31-CA-091298.

DOCUMENTS TO BE PRODUCED

1. All witness statements, declarations, affidavits or interview summaries related to the events set forth in the charge including, but not limited to, the events that allegedly occurred in June 2012, and on August 23, 2012 and September 6, 2012.
2. All documents that identify the witnesses on whom the Board relied on in determining that respondent has “been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.”
3. All documents that evidence the conduct that the Board alleges Susanne Corlett engaged in as described in the charge.
4. All documents that evidence the conduct that the Board alleges Heidi Greene engaged in as described in the charge.
5. All documents that evidence the conduct that the Board alleges Saro Tomasian engaged in as described in the charge.
6. All documents provided to the Board by Maria Bodkin or any other person related to this charge including, but not limited to, notes or calendar entries regarding any of the conduct alleged in the charge, all communications between Maria Bodkin and any other person regarding the conduct alleged in the charge, all documents that evidence protected concerted activity engaged in by Maria Bodkin or any other employee, all documents that evidence “threats” allegedly made to Maria Bodkin or any other employee by Heidi Greene, Saro Tomasian or any other person, and all documents evidencing coercive statements allegedly made to Maria Bodkin or any other employee.
7. All communications by or between Maria Bodkin, Pamela Watson and any other person regarding the events that allegedly occurred in June 2012, and on August 23, 2012 and September 6, 2012, as set forth in the charge.
8. All documents the Board intends to introduce into evidence at the hearing on the charge.
9. All documents the Board has received from Charging Party and the NUHW related to this charge.
10. All documents that identify the witnesses the Board intends to call to testify at the hearing on this charge.
11. All NUHW flyers and other documents obtained by the Board in connection with this charge.
12. All documents that evidence, support, refer to or contradict the allegation in the charge that the Employer has engaged in unfair labor practices.
13. All communications between the Board and the NUHW regarding this charge.

CERTIFICATE OF SERVICE

This certifies that the foregoing **SUBPOENA DUCES TECUM** was served this 13th day of March, 2013, by certified mail, United States Postal

Service upon:

Cecelia Valentine
Counsel for the Acting General Counsel
888 S. Figueroa Street, 9th Floor
Los Angeles, CA 90017

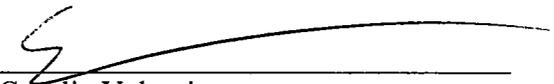
By: 
J. Clewett

STATEMENT OF SERVICE

I hereby certify that a copy of the **Order Referring Petition to Revoke Subpoena Duces Tecum**, together with **Counsel for the Acting General Counsel's Petition to Revoke Subpoena Duces Tecum**, was submitted by e-filing to the Division of Judges in San Francisco on March 21, 2012, and that the following party was served with a copy of said documents, by electronic mail, on March 21, 2013:

Karen Rooney, Attorney at Law
Karen Rooney Law
Krooney@rooneylawla.com

Respectfully Submitted,



Cecelia Valentine,
Counsel for the Acting General Counsel

DATED at Los Angeles, California, this 21st day of March, 2013.