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Via overnight mail

April 24, 2014

Mr. Gary Shinnars, Executive Secretary
National Labor Relations Board
1099 14th St. N.W.
Washington, D.C. 20570-0001

**RE: Meadlowlands Hospital Medical Center and HPAE
22-CA-086823
Request to File Brief and Letter Brief**

Dear Mr. Shinnars:

This law firm represents New Jersey Citizen Action (“NJCA”). Please accept this letter as NJCA’s request to file a brief as Amicus Curiae in the above-referenced matter and its brief in support of its application.

I. Request to File a Brief as Amicus Curiae

New Jersey Citizen Action (“NJCA”) respectfully requests that the Board grant permission to file a letter brief as amicus curiae. NJCA is a 501 (c)(4) tax-exempt organization and New Jersey’s largest watchdog group, representing over 60,000 members and 110 affiliated organizations. To help increase the capacity for collective action, NJCA works in coalition with individuals and organizations of all stripes that share a common vision of citizen power. NJCA advocates for New Jersey residents on

issues such as affordable health care, fair banking and foreclosure prevention, lower utility rates, and campaign finance reform. In addition, NJCA works in coalition with numerous labor unions, including the Health Professional and Allied Employees, AFT/AFL-CIO (“HPAE”), on issues ranging from paid sick leave to access to affordable health care for all New Jersey residents.

NJCA has a vested interest in the Board’s decision whether to revoke a Meadowlands’ subpoena provision demanding all documents from HPAE that relate to communications between HPAE and citizens’ organizations, such as New Jersey Citizen Action. (Charging Party Exhibit L, p. 167-168). NJCA agrees with HPAE’s analysis that the Union need not produce such documents insofar as the defense that the documents aim to establish – that the union engaged in “economic pressure activity” – should be stricken. In addition, however, NJCA has a broader interest in ensuring that its communications with its union allies not be subject to broad disclosure in an unfair labor practice hearing to which NJCA is not a party. The provision of the subpoena which seeks communications between HPAE and citizen organizations is a fishing expedition that implicates important privacy and First Amendment concerns that the Board must consider.

II. The subpoena seeking communications between the Union and NJCA, a third-party citizen organization, implicates important privacy and free speech concerns and should be revoked.

In Berbiglia, Inc., 233 NLRB 1476 (1977), the NLRB affirmed the decision of an administrative law judge to revoke an employer’s subpoena for records of communications between the union and its members and other third-party organizations. Specifically, the employer “sought to obtain a wide-ranging examination of the Union’s

records, including communications between the Union and its members and *with other organizations.*” Id. at 1495. In revoking the subpoena, the ALJ reasoned “that requiring the Union to open its files to Respondent would be inconsistent with and subversive of the very essence of collective bargaining and the quasi-fiduciary relationship between a union and its members. If collective bargaining is to work, the parties must be able to formulate their positions and devise their strategies without fear of exposure.” Id. While not specifically addressing the employer’s request for records pertaining to the Union’s communications to “other organizations,” the ALJ’s reasoning that the Union must be able to formulate its positions and devise its strategies “without fear of exposure” necessarily applies to a union’s relationships with “other organizations” with whom the union has formed an alliance.

The reasoning behind Berbiglia is a starting point to analyze the important policy reasons for granting the Union’s appeal to revoke the subpoena as it applies specifically to communications with third party organizations. Just as unions must be able to engage in confidential communications when devising strategy, NJCA must be able to communicate freely with its allies and coalition partners, including HPAAE, without “fear of exposure” in a collateral proceeding to which NJCA is not a party.

Additionally, to the extent that the Union’s communications with third parties, including NJCA, may constitute protected activity under the Act, those communications should not be disclosed. An order requiring the Union to reveal those communications would chill protected activity in the same way that overly broad work rule circumscribing certain kinds of speech has a chilling effect on the rights of employees to discuss their wages, hours, and working conditions with each other, with the Union, with

governmental agencies, with the press, and with allied individuals and organizations. See, e.g., University Medical Center, 335 NLRB 1318, 1322 (2001) (rule prohibiting disclosure of confidential information about employees "is unlawfully broad because it could reasonably be construed by employees to prohibit them from discussing information concerning terms and conditions of employment, including wages"); Waco, Inc., 273 NLRB 746, 748 (1984) (rule prohibiting employees from discussing their wages violates the Act); Kinder-Care Learning Centers, Inc., 299 NLRB 1171 (1990) (finding that the Act protects employees publicizing their working conditions whether directed to the other employees, news reporters, the public in general, or the employer's customers, advertisers, or parent company); Leather Center, Inc., 312 NLRB 521, 528 (1993) (finding that the Act protects employees who notify the media and others about their complaints or grievances against management in an effort to secure favorable coverage or aid).

Furthermore, federal and state courts recognize that subpoenas issued during the discovery process may raise significant First Amendment freedom of speech and association concerns. See Grandbouche v. Clancy, 825 F.2d 1463, 1466 (10th Cir. 1987)(the First Amendment "may be applicable in the context of discovery orders, even if all of the litigants are private entities."). Courts construe the First Amendment to create a qualified privilege against disclosure of certain types of associational information. See, e.g., Snedigar v. Hoddersen, 786 P.2d 781 (Sup. Ct. Wash. 1990)(recognizing that the principal defendant in the matter, the Freedom Socialist Party, established a threshold claim of associational privilege in response to a subpoena seeking minutes of Party meetings). The recognition of an associational privilege is derived from

the United State Supreme Court's decision in NAACP v. Alabama, 357 U.S. 1163, 1172 (1958), where the Court found that a court order requiring the association to disclose certain internal records entailed a "substantial restraint upon the exercise by petitioner's members of their right to freedom of association." In so holding, the Court noted that "effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly." Id. at 1171. While the case before the Court involved the relationship between an individual's freedom to associate with a particular group and the privacy in those associations, the Court's reasoning is equally compelling in the context of organizations which associate with each other to advocate for controversial points of view.

The type of information to which the associational privilege applies is broad based, and in the current matter, the Meadowlands' far-reaching request for all documents that relate to communications between HPAE and NJCA will touch upon the types of associational activities that the privilege covers. See NAACP, 357 U.S. at 1174 (applying the privilege to membership lists); Grandbouche, 825 F.2d at 1467 (remanding to district court to determine the validity of the privilege with respect to mailing lists maintained by the National Commodity and Barter Association). An instructive case regarding the type of internal associational activity that the privilege protects is Heartland Surgical Speciality Hospital, LLC v. Midwest Division, Inc., 2007 WL 852521 (D. Kansas, March 16, 2007). There, the plaintiff sought production of documents from a third-party, Kansas Hospital Association, some of which related to the association's

strategy of advocating for bills in the Kansas legislature. The court concluded that “this is the type of internal associational activity and past political activity that the First Amendment is designed to protect.” Id. at *5. Accordingly, the district court found that the association had met its prima facie burden to show that the disclosure of such material would have a “chilling effect” on the associational activities. The court then determined that the requested documents were not relevant or necessary to any asserted claims.

Here, the Board must consider the “chilling effect” on NJCA’s associational activities of the Meadowlands’ broad and far-reaching subpoena. NJCA’s ability to advocate on behalf of New Jersey citizens is built, in part, on the power it derives from forming coalitions with other organizations, including labor unions, which share its common goals. If its communications and other activities done in conjunction with labor unions are subject to disclosure in collateral proceedings, NJCA may be in the future limited in its ability to associate, share information and strategize with labor organizations, thus impeding its ability to carry out its core mission.

NJCA has a significant interest in maintaining the privacy of its communications with HP AE. NJCA respectfully requests that the Board revoke the subpoena as it pertains to all communications between HP AE and third-party organizations.

Sincerely,



Annmarie Pinarski, Esq.

AP/
Encl.
Cc: Phyllis Salowe-Kaye, Exec

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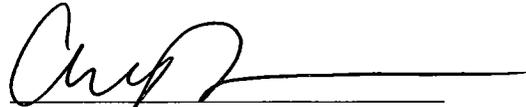
I hereby certify that on April 24, 2014 a copy of the foregoing Request to File a Brief as Amicus Curiae and a letter brief in support of such application was served via electronic mail upon the following parties:

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Annmarie Pinarski, Esq.

Dated: April 24, 2014

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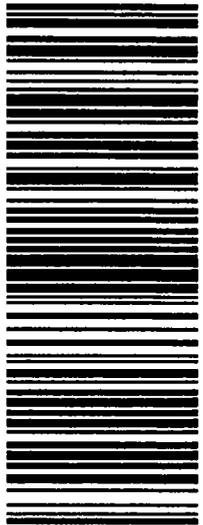
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