

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9**

LOGMET, LLC

and

Case 09-CA-247369

LOCAL UNION NO. 780, MOTION PICTURE
AND VIDEO LABORATORY TECHNICIANS,
ALLIED CRAFTS AND GOVERNMENT
EMPLOYEES, IATSE

**APPEAL OF THE ALJ'S ORDER DENYING, IN PART, UNION'S PETITION TO
REVOKE / MOTION TO QUASH RESPONDENT'S SUBPOENA DUCES TECUM**

Charging Party, LOCAL UNION NO. 780, MOTION PICTURE AND VIDEO
LABORATORY TECHNICIANS, ALLIED CRAFTS AND GOVERNMENT EMPLOYEES,
IATSE, ("Union") through undersigned counsel, hereby appeals the ALJ's Order denying, in part,
the Union's Petition to Revoke/Motion to Quash Respondent's Subpoena Duces Tecum and states:

1. On February 1, 2021, LOGMET, LLC., ("Logmet"), through counsel, served a
Subpoena Duces Tecum (the "Subpoena") on the Union's counsel. (Exhibit 1).

2. Section 102.118(a) states, in relevant part:

Except as provided in section 102.117 of these rules respecting
requests cognizable under the Freedom of Information Act, no
present or former Regional Director, field examiner, administrative
law judge, attorney, specially designated agent, General Counsel,
Member of the Board, or other officer or employee of the Agency
shall produce or present **any files, documents, reports,
memoranda, or records of the Board or of the General Counsel,**
whether in response to a subpoena duces tecum or otherwise,
without the written consent of . . . the General Counsel if the
document is in a Regional Office of the Agency¹

29 CFR § 102.118(a).

¹¹ Unless otherwise stated, all underscoring, **bolding**, *italics*, or combination thereof has been supplied.

Section 102.118(c) further states:

Whenever any subpoena ad testificandum or subpoena duces tecum, the purpose of which is to adduce testimony or require production of records as described hereinabove, shall have been served on any such person or other officer or employee of the Board, that person will, unless otherwise expressly directed by the . . . General Counsel . . ., move pursuant to the applicable procedure, whether by petition to revoke, motion to quash, or otherwise, to have such subpoena invalidated on the ground that the evidence sought is privileged against disclosure by this rule.

29 FR § 102.118(c).

3. On February 2, 2021, Counsel for the Acting General Counsel filed a Motion to Quash a nearly identical subpoena served on the Counsel for the Action General Counsel pursuant to Section 102.118(c). (Appeal of Administrative Law Judge Amchan’s Order Denying in Part Counsel for the Acting General Counsel’s Motion to Quash Subpoena Duces Tecum B-1-1-BIQQDL and Subpoena Duces Tecum B-1-1BIQK3H; Attachment 2).² In that Motion, Counsel for the General Counsel stated that the Employer failed to seek written consent from the General Counsel pursuant to Section 102.118(a). (*Id.*)

4. In Response, Logmet argued that it served a subsequent subpoena directly on the [Acting] General Counsel which satisfied the procedural requirements under Section 102.118(a). (Counsel for General Counsel’s Appeal; Attachment 3).

5. On February 10, 2021, the Administrative Law Judge (“ALJ”) issued an Order granting in part, denying in part the Counsel for the Acting General Counsel’s Petition to Revoke Subpoenas and the Union’s Petition to Revoke/Motion to Quash. (Counsel for General Counsel’s Appeal; Attachment 6.). In the Order, while the ALJ granted in part the petitions to revoke, he

² For brevity and clarity, the document filed as “Appeal of Administrative Law Judge Amchan’s Order Denying in Part Counsel for the Acting General Counsel’s Motion to Quash Subpoena Duces Tecum B-1-1-BIQQDL and Subpoena Duces Tecum B-1-1BIQK3H” on February 12, 2021 shall be herein referred to as “Counsel for General Counsel’s Appeal.”

directed the Counsel for the Acting General Counsel, the Acting General Counsel, and the Union to produce certain documents in its possession that were provided to the Counsel for the Acting General Counsel as evidence or potential evidence in this case.

6. On February 12, 2021, the ALJ held a conference call to clarify his order and indicated in that call that he did not interpret Section 102.118(a) to prohibit Logmet from obtaining investigative documents in the possession of the Counsel for the General Counsel, the Acting General Counsel, or the Union.

7. However, the plain language of Section 102.118 (a) requires not only a request (or subpoena) to the [Acting] General Counsel but requires the “written consent” of the [Acting] General Counsel before the production of “**any files, documents, reports, memoranda, or records** of the Board or of the General Counsel.” *Id.*

8. The National Labor Relations Board (“Board”) has made clear that this evidentiary privilege applies equally to those records and documents in possession of third parties such as the Union. See, e.g., *H.B. Zachry*, 310 NLRB 1037 (1993). Therefore, the Subpoena Duces Tecum served on the Union is defective on its face and should be revoked and/or quashed in its entirety.

9. Even further, **the Subpoena is facially defective in that it is vastly overbroad and requests information that is clearly subject to the work-product doctrine.** Requests 6-8 and Requests 11-19 all specifically refer to the request of any and all documents that support specific paragraphs and allegations in the Complaint.

10. These requests are nothing more than a naked attempt to obtain pre-trial discovery of documents and communications that were provided the Counsel for the Acting General Counsel in anticipation of the unfair labor practice hearing.

11. In *Kaiser Aluminum*, the Respondent requested the position statements and other documents provided to the General Counsel prior to an unfair labor practice proceeding. *Kaiser*

Aluminum & Chem. Corp., 339 NLRB 829 (2003). The Board applied the work product doctrine as reflected in Rule 26(b)(3) of the Federal Rules of Civil Procedure to both the position statements as well as to any documents attached to those statements and noted that the Respondent did not demonstrate any substantial need or that it could not obtain them elsewhere without undue hardship. *Id.* The Union did not and does not intend to waive the privileges of the work-product doctrine.

12. Because both the materials requested in the Respondent's Subpoena to the Union are protected by Section 102.118 and the work product doctrine, the ALJ's order should be reversed the Subpoena served on the Union should be revoked.

Dated: February 15, 2021.

Respectfully submitted by:

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STATEMENT OF SERVICE

I hereby certify that on this date I served the foregoing document on the following parties:
Counsel for Respondent: Howard E. Cole, Attorney at Law Lewis, Roca, Rothgerber, Christie, LLP; 3993 Howard Hughes Parkway, Suite 600 Las Vegas, NV 89169-5996 at hcole@lrrc.com and Counsel for the Acting General Counsel Zuzana Murarova, Region 9, National Labor Relations Board Room 3-111; John Weld Peck Federal Building 550 Main Street Cincinnati, Ohio 45202-3271; via email at zuzana.murarova@nlrb.gov.

/s/ Nicholas Wolfmeyer
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