

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

**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 150, AFL-CIO**

and

Case 25-CB-9289

JOEL TIBBETTS

ORDER¹

International Union of Operating Engineers, Local 150, AFL-CIO's petition to revoke subpoena duces tecum B-622151 is denied. The subpoena seeks information relevant to the matter under investigation, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations, and the Union has failed to establish any legal basis for revoking the subpoena. See generally *NLRB v. North Bay Plumbing*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v.*

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, ___ F.3d ___, 2009 WL 4912300 (10th Cir. Dec. 22, 2009); *Narricot Industries, L.P. v. NLRB*, 587 F.3d 654 (4th Cir. 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

Carolina Food Processors, Inc., 81 F.3d 507 (4th Cir. 1996).²

However, we find that the Union has asserted a legitimate claim of confidentiality in the documents requested in paragraphs 1 through 3, part c, of the subpoena, each of which requests "Names and titles of all individuals compensated, amount compensated, and description of services rendered," warranting issuance of a protective order.³ Those documents may reveal the identity of employees who have engaged in organizing, strike, and/or picketing activities on behalf of the Union. Accordingly, we direct that any information

² It is well settled that the merits of a charge are not at issue in proceedings to revoke a subpoena. See *NLRB ex rel. Int'l Union of Elec., Radio & Mach. Workers, AFL-CIO-CLC v. Dutch Boy, Inc.*, 606 F.2d 929, 933 (10th Cir. 1979) ("because piecemeal appeals will disrupt and delay resolution of labor disputes, parties opposing the Board may not interpose defenses to the merits of the underlying unfair labor practice charges in subpoena enforcement actions"); *NLRB v. Frederick Cowan & Co., Inc.*, 522 F.2d 26, 28 (2nd Cir. 1975) ("[n]o defense relating to the administrative proceedings can be raised" during an administrative subpoena enforcement action); *Cudahy Packing Co. v. NLRB*, 117 F.2d 692, 694 (10th Cir. 1941) (a party in an administrative subpoena enforcement action "may not ... assert its defenses in the principal case"); *EEOC v. A.E. Staley Mfg. Co.*, 711 F.2d 780, 788 (7th Cir. 1983) ("defenses on the merits of an administrative charge may not be raised to block the enforcement of an administrative subpoena"). We therefore express no view as to the Union's contention that the charge is without merit, as this contention has no bearing on whether the subpoena should be revoked.

Further, Member Schaumber notes that the subpoena broadly calls for production of, inter alia, "all" books and records that document the disputed expenses. He agrees that these documents relate to the matter under investigation but does not reach the issue of whether the General Counsel has established that production of "all" such documents is necessary to the investigation of this charge, as the petition does not argue that the subpoena should be revoked or limited on that basis.

Chairman Liebman notes that the Union has not argued that the Regional Office is improperly treating the unfair labor practice charge as a challenge under *California Saw & Knife Works*, 320 NLRB 224, 233 (1995), *enfd. sub nom. Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), *cert. denied sub nom. Strang v. NLRB*, 525 U.S. 813 (1998).

³ See Rule 26(c) of the Federal Rules of Civil Procedure.

concerning the names, titles, or job descriptions of employees who have participated in organizing, strike, picketing, and/or other protected concerted activities on behalf of the Union, which is provided pursuant to the subpoena and this Order, shall be used solely for the purpose of the unfair labor practice investigation and shall not be disclosed to Minteq International, Inc. or any other third parties.

Dated, Washington, D.C., January 29, 2010.

WILMA B. LIEBMAN, CHAIRMAN

PETER C. SCHAUMBER, MEMBER