

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

ENTERGY OPERATIONS, INC.

and

Case 15-CA-119780

**INTERNATIONAL UNION SECURITY,
POLICE AND FIRE PROFESSIONALS
OF AMERICA, LOCAL NO. 709**

ORDER¹

The Employer's petition to revoke subpoena duces tecum B-716546 is denied.

The subpoena seeks information relevant to the matter under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations.² Further, the Employer has failed to establish any other legal basis for revoking the subpoena. See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).³

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² The subpoena narrowly seeks seven well defined categories of documents limited to ethics complaints filed by the employee in question. Member Johnson differs in part; he notes that the last category of documents is arguably overbroad, but the Employer did not object on such a basis.

³ The Employer's various arguments are rejected. In regard to the Employer's multiple merits-based arguments, which the Employer is free to assert if this charge goes to trial, it is well established that the arguable merits of an unfair labor practice charge are not relevant to the issue of whether 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

Dated, Washington, D.C., June 5, 2014.

MARK GASTON PEARCE,	CHAIRMAN
HARRY I. JOHNSON, III,	MEMBER
NANCY SCHIFFER,	MEMBER

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"). In regard to the confidentiality claim, no document or evidence was submitted regarding any representations of confidentiality to employees. Finally, the Employer claimed privilege but did not offer a privilege log.