

DAN BURTON, INDIANA
JOHN L. MICA, FLORIDA
TODD RUSSELL PLATTIS, PENNSYLVANIA
MICHAEL R. TURNER, OHIO
PATRICK McHENRY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
CONNIE MACK, FLORIDA
TIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
ANN MARIE BUERKLE, NEW YORK
PAUL A. GOSAR, D.D.S., ARIZONA
RAUL R. LABRADOR, IDAHO
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DesJARLAIS, M.D., TENNESSEE
JOE WALSH, ILLINOIS
TREY GOWDY, SOUTH CAROLINA
DENNIS A. ROSS, FLORIDA
FRANK C. GUINTA, NEW HAMPSHIRE
BLAKE FARENTHOLD, TEXAS
MIKE KELLY, PENNSYLVANIA

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
<http://oversight.house.gov>

EDOLPHUS TOWNS, NEW YORK
CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
DENNIS J. KUCINICH, OHIO
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
MIKE QUIGLEY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
BRUCE L. BRALEY, IOWA
PETER WELCH, VERMONT
JOHN A. YARMUTH, KENTUCKY
CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEIER, CALIFORNIA

LAWRENCE J. BRADY
STAFF DIRECTOR

May 12, 2011

Lafe E. Solomon
Acting General Counsel
National Labor Relations Board
1099 14th Street, NW
Washington, D.C. 20570-0001

Dear Mr. Solomon:

The Committee on Oversight and Government Reform is conducting oversight of recent legal actions taken by the Office of General Counsel of the National Labor Relations Board (“NLRB” or “Board”). We write to you concerning two issues.

First, on March 26, 2010, the International Association of Machinists and Aerospace Workers (“IAM”) charged¹ that the Boeing Company (“Boeing” or “Respondent”) engaged in unfair labor practices under the National Labor Relations Act (the “Act”).² On April 20, 2011, after an investigation into the IAM’s charges, you, as Acting General Counsel of the NLRB, issued a Complaint and Notice of Hearing against Boeing pursuant to § 10(b) of the Act and § 102.15 of the Board’s Rules and Regulations.

Since 1975, the IAM has been designated the exclusive collective bargaining representative (“Unit”) of Boeing’s production and maintenance employees in Washington State and Portland, Oregon.³ The most recent collective bargaining agreement between Boeing and the IAM has been in effect since November 2, 2008, and is effective until September 8, 2012.⁴

The Board’s Complaint arises from Boeing’s transfer of its second 787 Dreamliner production line of three planes per month from the Unit to its non-union site in North Charleston, South Carolina in October of 2009.⁵ The Board charged Boeing with “interfering with, restraining, and coercing employees” in the exercise of their rights, “discriminating in regard to the hire or tenure or terms or conditions of employment of its employees,” and engaging “in

¹ *Boeing and International Association of Machinists and Aerospace Workers District Lodge 751*, affiliated with *International Association of Machinists and Aerospace Workers*, before the National Labor Relations Board, Region 19, United States of America, Case No. 19-CA-32431 [hereinafter “Complaint”].

² 29 U.S.C. § 151 *et seq.*

³ COMPLAINT, *supra* note 1 at 4.

⁴ *Id.*

⁵ *Id.* at 5.

unfair labor practices affecting commerce” therefore violating §§ 8(a)(3) and (1) and §§2(6) and (7) of the Act.⁶ The Board found that Boeing “made coercive statements to its employees that it would remove or had removed work from the Unit because employees had struck and Respondent threatened or impliedly threatened that the Unit would lose additional work in the event of future strikes.”⁷

Boeing has responded that the Board’s Complaint is legally frivolous – adding that the one thousand jobs Boeing created in South Carolina have not come at the expense of jobs in the State of Washington.⁸ Furthermore, Boeing’s South Carolina facility, which it announced plans to build seventeen months ago, is nearly complete.⁹

Peter Schaumber, the former chairman of the Board, has described the Board’s move as “unprecedented.”¹⁰ Schaumber has argued “[t]he workers don’t have any claim to the work. . . . If the workers don’t have any claim to the work, it wasn’t retaliatory to open a new second production line. . . . It is simply expanding its business operation.”¹¹

A letter from nine state Attorneys General – including Alan Wilson, the Attorney General of South Carolina – called on the Board to withdraw its complaint against Boeing, describing it as “an assault upon the constitutional right to free speech, and the ability of our states to create jobs and recruit industry.”¹² The Attorneys General wrote, “[y]our ill-conceived retaliatory action seeks to destroy our citizens’ right to work. It is South Carolina and Boeing today, but will be any of our states, with our right to work guarantees, tomorrow. . . . [t]his unparalleled and overreaching action seeks to drive a stake through the heart of the free enterprise system.”¹³

Second, we note that you have directed the NLRB to file lawsuits against the states of Arizona and South Dakota.¹⁴ We understand that the NLRB seeks to invalidate constitutional amendments passed by these states protecting workers’ rights to secret ballot elections. The NLRB is apparently seeking to administratively impose card check,¹⁵ now that efforts to pass

⁶ *Id.* at 7.

⁷ *Id.* at 4.

⁸ PRESS RELEASE, BOEING COMPANY, *Boeing to Fight NLRB Complaint Back by Union*, (Apr. 20, 2011), available at <http://boeing.mediaroom.com/index.php?s=43&item=1714> (last visited May 2, 2011).

⁹ *Id.*

¹⁰ Judson Berger, *Ex-Labor Board Chairman: Union-Backed Case Against Boeing ‘Unprecedented’*, FOXNEWS, (Apr. 26, 2011), available at <http://www.foxnews.com/politics/2011/04/26/ex-labor-board-chairman-union-backed-case-boeing-unprecedented/> (last visited Apr. 30, 2011).

¹¹ *Id.*

¹² LETTER, Alan Wilson, Attorney General of South Carolina, *et al.*, to Lafe E. Solomon, Acting General Counsel, National Labor Relations Board (Apr. 28, 2011) at 1.

¹³ *Id.*

¹⁴ Letter, Lafe Solomon, Acting General Counsel, NLRB, to Attorney Generals of Arizona, South Dakota, Utah, and South Carolina (Apr. 22, 2011). See also Melanie Trottman, *Labor Board Warns on Secret Ballots*, WALL STREET J., (Jan. 15, 2011), available at http://online.wsj.com/article/SB10001424052748704637704576082334037133042.html?mod=googlenews_wsj (last visited Mar. 1, 2011).

¹⁵ See Editorial, *Back Door Card Check*, WALL STREET J., Sept. 14, 2010, at A20 (suggesting Craig Becker will push the NLRB to implement card check through the adjudicatory process).

card-check legislation have failed to gain support in Congress.¹⁶ You are currently challenging the authority of states to protect workers' rights to secret-ballot elections before their jobs can be unionized. You seek to invalidate constitutional amendments passed in Arizona and South Dakota protecting workers' rights to secret ballot elections reserving the right to also sue the states of Utah and South Carolina. In a letter you wrote to these states' Attorneys General, you claim that the state laws are "preempted by operation of the NLRA (29 U.S.C. 151, *et seq.*) and the Supremacy Clause of the United States Constitution (U.S. Const. Art IV, cl. 2)."¹⁷

According to one critic of card check, the NLRB's actions reflect the Board's determination "to accomplish card check by backdoor means against the wishes of the American people and Congress."¹⁸ Late last year, the Democratic majority on the Board "indicated its interest in overturning a Bush-era ruling allowing some workers to challenge a card-check certification agreed to by a company and majority of its workers."¹⁹ Marshall Babson, a management lawyer appointed to a Democratic seat on the NLRB by former President Ronald Reagan, described the NLRB's actions as "a perversion of what administrative law is supposed to be."²⁰

The Committee is carefully evaluating labor policy given the current economic climate. The NLRB's recent actions to address labor activity are likely to impact America's economic recovery. They also raise issues of great public importance. In light of these concerns, the Committee seeks information regarding the NLRB's communications and policies. The Committee requests that you provide the following documents and information for the time period from January 1, 2009, to the present:

- 1) All documents and communications referring or relating to the Office of General Counsel's investigation of Boeing, including but not limited to all communications between the Office of General Counsel and the National Labor Relations Board.
- 2) All documents, including emails and call logs, and communications between anyone in the Office of General Counsel or the National Labor Relations Board and the International Association of Machinists.
- 3) All documents, including emails and call logs, and communications between the Office of General Counsel or the National Labor Relations Board and any representative(s) of the Boeing Company.
- 4) All documents referring or relating to the Office of General Counsel's investigations of union election laws in Arizona, South Carolina, South Dakota, and Utah.

¹⁶ Sam Hananel, *Feds threaten to sue states over union laws*, AP, (Jan. 14, 2011), *available at* http://news.yahoo.com/s/ap/20110114/ap_on_re_us/us_unions_secret_ballots (last visited Mar. 3, 2011).

¹⁷ *Supra* note 14.

¹⁸ Hananel, *supra* note 15, (quoting Phil Kerpen, Vice President for Policy, Americans for Prosperity).

¹⁹ Steven Pearlstein, *Our modern twist on the old world political death spiral*, WASH. POST., (Feb. 27, 2011), *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/26/AR2011022600109.html> (last visited Mar. 1, 2011).

²⁰ *Id.* (quoting Marshall Babson).

Mr. Lafe E. Solomon
May 12, 2011
Page 4

Please provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on May 27, 2011. When producing documents to the Committee, please deliver production sets to the Majority Staff in room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions about this request, please contact Kristina Moore or Daniel Epstein of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman
Committee on Oversight and
Government Reform



Trey Gowdy
Chairman
Subcommittee on Health Care,
District of Columbia,
Census and the National Archives



Dennis Ross
Chairman
Subcommittee on Federal Workforce,
U.S. Postal Service and Labor Policy

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Stephen Lynch, Ranking Minority Member,
Subcommittee on Federal Workforce, U.S. Postal Service & Labor Policy

The Honorable Danny Davis, Ranking Minority Member,
Subcommittee on Health Care, District of Columbia, Census and the National Archives

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.