



United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlr.gov

June 24, 2011

The Honorable Denny Rehberg, Chairman
House Appropriations Committee
Subcommittee on Labor, Health and Human
Services, Education and Related Agencies
House of Representatives
2448 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rehberg,

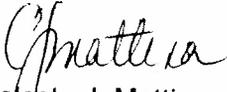
I write in response to your June 6, 2011 letter to National Labor Relations Board Acting General Counsel Lafe E. Solomon, regarding the hearing now pending before an administrative law judge that will determine whether The Boeing Company ("Boeing") engaged in certain discriminatory behavior.

With all due respect, we do not agree with the various factual assertions contained within your letter. In that regard, I direct you to the basic facts and legal theory of the Acting General Counsel's case, which are contained in the Boeing complaint and the Acting General Counsel's Opposition to Respondent's Motion to Dismiss & Strike ("Acting General Counsel's Opposition"). Both of these documents are enclosed with this letter. To assist you in your review of the enclosed information, I note that the Acting General Counsel's Opposition also contains legal precedent relevant to the complaint.

In addition to the aforementioned documents, we would be happy to provide you with copies of the transcript and exhibits from the public hearing contemporaneous with their availability, as well as the post-hearing briefs once they are filed. The transcript and exhibits will provide a detailed accounting of the exact nature of the case and the facts proffered in support and rebuttal, which frame the basis for all legal arguments. The briefs will further detail the precise precedent invoked and relied upon.

We trust that the information provided sufficiently addresses your questions about precedent. If you have further questions, please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700.

Sincerely,


Celeste J. Mattina
Acting Deputy General Counsel

Enclosures

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

THE BOEING COMPANY

and

Case 19-CA-32431

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
DISTRICT LODGE 751, affiliated with
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS

COMPLAINT AND NOTICE OF HEARING

International Association of Machinists and Aerospace Workers District Lodge No. 751 ("Local 751" or the "Union"), affiliated with International Association of Machinists and Aerospace Workers ("IAM"), has charged in Case 19-CA-32431 that The Boeing Company ("Respondent" or "Boeing"), has been engaging in unfair labor practices as set forth in the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.*

Based thereon, the Acting General Counsel of the National Labor Relations Board (the "Board"), by the undersigned, pursuant to § 10(b) of the Act and § 102.15 of the Board's Rules and Regulations, issues this Complaint and Notice of Hearing and alleges as follows:

1.

The Charge was filed by the Union on March 26, 2010, and was served on Respondent by regular mail on or about March 29, 2010.

2.

(a) Respondent, a State of Delaware corporation with its headquarters in Chicago, Illinois, manufactures and produces military and commercial aircraft at various facilities throughout the United States, including in Everett, Washington (the "facility"), and others in the Seattle, Washington, and Portland, Oregon, metropolitan areas.

(b) Respondent, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of \$500,000.

(c) Respondent, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(a), both sold and shipped from, and purchased and received at, the facility goods valued in excess of \$50,000 directly to and from points outside the State of Washington.

(d) Respondent has been at all material times an employer engaged in commerce within the meaning of §§ 2(2), (6) and (7) of the Act.

3.

The Union is, and has been at all material times, a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors within the meaning of

§ 2(11) of the Act, and/or agents within the meaning of § 2(13) of the Act, acting on behalf of Respondent:

Jim Albaugh	—	Executive Vice President, Boeing; President and CEO of Integrated Defense Systems (until late August 2009); CEO, Boeing Commercial Airplanes (as of late August 2009)
Scott Carson	—	Executive Vice President, Boeing; CEO, Boeing Commercial Airplanes (until late August 2009)
Ray Conner	—	Vice President and General Manager of Supply Chain Management and Operations, Boeing Commercial Airplanes
Scott Fancher	—	Vice President and General Manager of the 787 Program
Fred Kiga	—	Vice President, Government and Community Relations
Doug Kight	—	Vice President, Human Resources, Boeing Commercial Airplanes
Jim McNemey	—	President, Chairman, and CEO
Jim Proulx	—	Boeing spokesman
Pat Shanahan	—	Vice President and General Manager of Airplane Programs
Gene Woloshyn	—	Vice President, Employee Relations

5.

(a) Those employees of Respondent enumerated in Section 1.1(a) of the collective bargaining agreement described below in paragraph 5(c), including, *inter alia*, all production and maintenance employees in Washington State, constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act (the "Puget Sound Unit").

(b) Those employees of Respondent enumerated in Section 1.1(c) of the collective bargaining agreement described below in paragraph 5(c), including, *inter*

alia, all production and maintenance employees in the Portland, Oregon area, constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act (the "Portland Unit").

(c) Since at least 1975 and at all material times, the IAM has been the designated exclusive collective bargaining representative of the Puget Sound Unit and the Portland Unit (collectively, the "Unit") and recognized as such representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 2, 2008, to September 8, 2012.

(d) Since 1975, during the course of the parties' collective-bargaining relationship, the IAM engaged in strikes in 1977, 1989, 1995, 2005, and 2008.

6.

On or about the dates and by the manner noted below, Respondent 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:

(a) October 21, 2009, by McNerney in a quarterly earnings conference call that was posted on Boeing's intranet website for all employees and reported in the Seattle Post Intelligencer Aerospace News and quoted in the Seattle Times, made an extended statement regarding "diversifying [Respondent's] labor pool and labor relationship," and moving the 787 Dreamliner work to South Carolina due to "strikes happening every three to four years in Puget Sound."

(b) October 28, 2009, based on its October 28, 2009, memorandum entitled "787 Second Line, Questions and Answers for Managers," informed employees, among other things, that its decision to locate the second 787 Dreamliner line in South Carolina was made in order to reduce Respondent's vulnerability to delivery disruptions caused by work stoppages.

(c) December 7, 2009, by Conner and Proulx in an article appearing in the Seattle Times, attributed Respondent's 787 Dreamliner production decision to use a "dual-sourcing" system and to contract with separate suppliers for the South Carolina line to past Unit strikes.

(d) December 8, 2009, by Conner in an article appearing in the Puget Sound Business Journal, attributed Respondent's 787 Dreamliner production decision to use a "dual-sourcing" system and to contract with separate suppliers for the South Carolina line to past Unit strikes.

(e) March 2, 2010, by Albaugh in a video-taped interview with a Seattle Times reporter, stated that Respondent decided to locate its 787 Dreamliner second line in South Carolina because of past Unit strikes, and threatened the loss of future Unit work opportunities because of such strikes.

7.

(a) In or about October 2009, on a date better known to Respondent, but no later than October 28, 2009, Respondent decided to transfer its second 787 Dreamliner production line of 3 planes per month from the Unit to its non-union site in North Charleston, South Carolina.

(b) Respondent engaged in the conduct described above in paragraph 7(a) because the Unit employees assisted and/or supported the Union by, *inter alia*, engaging in the protected, concerted activity of lawful strikes and to discourage these and/or other employees from engaging in these or other union and/or protected, concerted activities.

(c) Respondent's conduct described above in paragraph 7(a), combined with the conduct described above in paragraph 6, is also inherently destructive of the rights guaranteed employees by § 7 of the Act.

8.

(a) In or about October 2009, on a date better known to Respondent, but no later than December 3, 2009, Respondent decided to transfer a sourcing supply program for its 787 Dreamliner production line from the Unit to its non-union facility in North Charleston, South Carolina, or to subcontractors.

(b) Respondent engaged in the conduct described above in paragraph 8(a) because the Unit employees assisted and/or supported the Union by, *inter alia*, engaging in the protected, concerted activity of lawful strikes and to discourage these and/or other employees from engaging in these or other union and/or protected, concerted activities.

(c) Respondent's conduct described above in paragraph 8(a), combined with the conduct described above in paragraphs 6 and 7(a), is also inherently destructive of the rights guaranteed employees by § 7 of the Act.

9.

By the conduct described above in paragraph 6, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(a)(1) of the Act.

10.

By the conduct described above in paragraphs 7 and 8, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of §§ 8(a)(3) and (1) of the Act.

11.

By the conduct described above in paragraphs 6 through 10, Respondent has engaged in unfair labor practices affecting commerce within the meaning of §§ 2(6) and (7) of the Act.

12.

As part of the remedy for the unfair labor practices alleged herein, the Acting General Counsel seeks an Order requiring either that one of the high level officials of Respondent alleged to have committed the violations enumerated above in paragraph 6 read, or that a designated Board agent read in the presence of a high level Boeing official, any notice that issues in this matter, and requiring Respondent to broadcast such reading on Respondent's intranet to all employees.

13.

(a) As part of the remedy for the unfair labor practices alleged above in paragraphs 7 and 8, the Acting General Counsel seeks an Order requiring Respondent

to have the Unit operate its second line of 787 Dreamliner aircraft assembly production in the State of Washington, utilizing supply lines maintained by the Unit in the Seattle, Washington, and Portland, Oregon, area facilities.

(b) Other than as set forth in paragraph 13(a) above, the relief requested by the Acting General Counsel does not seek to prohibit Respondent from making non-discriminatory decisions with respect to where work will be performed, including non-discriminatory decisions with respect to work at its North Charleston, South Carolina, facility.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to this Complaint. The answer must be **received by this office on or before May 4, 2011, or postmarked on or before May 3, 2011.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at **www.nlr.gov**, click on ***File Case Documents***, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due

date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of § 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in this Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 14th day of June, 2011, at 9:00 a.m., in James C. Sand Hearing Room, 2966 Jackson Federal Building, 915 Second Avenue, Seattle, Washington, and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in

this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Seattle, Washington, this 20th day of April, 2011.



Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174-1078

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

The Boeing Company
Case: 19-CA-32431

20 April 2011

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 C.F.R. 102.16(a) or with the Division of Judges when appropriate under 29 C.F.R. 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

THE BOEING COMPANY

and

Case 19-CA-32431

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
DISTRICT LODGE 751, affiliated with
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS**

**ACTING GENERAL COUNSEL'S OPPOSITION
TO RESPONDENT'S MOTION TO DISMISS AND MOTION TO STRIKE**

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MACHINISTS AND AEROSPACE WORKERS**

**ACTING GENERAL COUNSEL'S OPPOSITION
TO RESPONDENT'S MOTION TO DISMISS AND MOTION TO STRIKE**

Pursuant to § 102.24 of the Board's Rules and Regulations, Counsel for the Acting General Counsel opposes the "Motion to Dismiss for Failure to State a Claim, or, in the Alternative, to Strike the Injunctive Relief Sought in ¶ 13(A) of the Complaint" (the "Motion") filed by Respondent The Boeing Company ("Respondent") on June 14, 2011. Respondent's Motion is premised on factual allegations based on a significant number of unsupported hearsay statements and exhibits, which cannot support a motion to dismiss.¹ To the contrary, as demonstrated below, the Complaint in this case readily meets notice pleading requirements to state a claim under well-established precedent under the National Labor Relations Act ("NLRA" or the "Act").

Respondent's alternative request that the Administrative Law Judge preemptively declare that the remedy sought is unavailable to the alleged discriminatees in this case is woefully premature, as the remedy requested is the standard remedy for the

¹ In this regard, it is noted that the Administrative Law Judge explicitly informed the parties that he did not wish for them to submit factual, as opposed to legal, analysis in their pre-trial briefs.

violations alleged and no record evidence has yet been adduced to support a claim that such a remedy is inappropriate on the facts of this case.

I. PROCEDURAL BACKGROUND

Paragraphs 6 and 9 of the Complaint allege that Respondent violated § 8(a)(1) of the Act by making coercive statements that it would remove or had removed work from bargaining units represented by International Associations of Machinists and Aerospace Workers, District Lodge 751, affiliated with International Associations of Machinists and Aerospace Workers (the "Union") because employees had struck, and by threatening or impliedly threatening that the bargaining units would lose additional work in the event of future strikes. Paragraphs 7, 8, and 10 of the Complaint allege that Respondent violated §§ 8(a)(3) and (1) of the Act by deciding to transfer a second 787 Dreamliner production line and a sourcing supply program for its 787 Dreamliner production from the bargaining units represented by the Union to its non-union site in North Charleston, South Carolina, or to subcontractors. Paragraph 13(a) of the Complaint seeks restoration of the *status quo ante* and requests as part of the remedy that Respondent be ordered to have bargaining-unit employees operate its second 787 Dreamliner production line in the State of Washington, utilizing supply chains maintained by the bargaining units in the Seattle, Washington, and Portland, Oregon, area facilities; and paragraph 13(b) of the Complaint states that other than as set forth in paragraph 13(a), the Acting General Counsel does not seek to prohibit Respondent from making non-discriminatory decisions with respect to where work will be performed, including non-discriminatory decisions with respect to work at its North Charleston, South Carolina, facility.

In its Answer, Respondent essentially denies all allegations of paragraphs 6 through 10 of the Complaint and denies that the relief sought in paragraph 13(a) of the Complaint will not effectively cause it to shut down its assembly facility in North Charleston, South Carolina. In addition to denying these and other paragraphs of the Complaint, Respondent raises 14 affirmative defenses. Among other things, Respondent contends in its third affirmative defense that:

[Respondent's] decision to place the second 787 assembly line in North Charleston was based upon a number of varied factors, including a favorable business environment in South Carolina for manufacturing companies like [Respondent]; significant financial incentives from the State of South Carolina; achieving geographic diversity of its commercial airline operations; as well as to protect the stability of the 787's global production system. [...] [Respondent] would have made the same decisions with respect to the placement of the second assembly line in North Charleston even if it had not taken into consideration the damaging impact of future strikes on the production of 787s.

Respondent further contends in its eighth affirmative defense that the remedy requested in the Complaint "would cause an undue hardship on [Respondent], its employees, and the state of South Carolina," and that "none of the complained of actions caused any hardship on any [of Respondent's] employees or the State of Washington." Thus, the pleadings leave numerous material issues in dispute.

II. RESPONDENT'S MOTION TO DISMISS SHOULD BE DENIED

A. The Legal Standard

The Board has adopted a system of notice pleading for its complaints. *Quanta*, 355 NLRB No. 217, slip op. at 2 (2010). This system is governed by § 102.15 of the Board's Rules and Regulations, which requires only that Complaints contain "(a) a clear and concise statement of the facts upon which assertion of jurisdiction by the Board is

predicated, and (b) a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed." As was aptly explained long ago:

The sole function of the Complaint is to advise the respondent of the charges constituting unfair labor practices as defined in the Act that he may have due notice and a full opportunity for hearing thereon. The Act does not require the particularity of pleading of an indictment or information, nor the elements of a cause like a declaration at law or a bill in equity. All that is requisite in a valid Complaint before the Board is that there be a plain statement of the things claimed to constitute an unfair labor practice that respondent may be put upon his defense.

NLRB v. Piqua Munising Wood Prods. Co., 109 F.2d 552, 557 (6th Cir. 1940). See also *American Newspaper Publishers Ass'n. v. NLRB*, 193 F.2d 782, 800 (3d Cir. 1951), *aff'd*, 345 U.S. 100 (1953); *The Artesia Cos., Inc.*, 339 NLRB 1224, 1226 (2003).

A Complaint cannot be dismissed for failure to state a claim upon which relief may be granted when the allegations of the Complaint, if true, set forth a violation of the Act. *Children's Receiving Home of Sacramento*, 248 NLRB 308, 308 (1980). In considering a motion to dismiss, "the Board construes the Complaint in the light most favorable to the General Counsel, accepts all factual allegations as true, and determines whether the General Counsel can prove any set of facts in support of his claims that would entitle him to relief." *Detroit Newspapers*, 330 NLRB 524, 524, n.1 (2000). There is a "powerful presumption against rejecting pleadings for failure to state a claim." *Robbins v. Wilkie*, 300 F.3d 1208, 1210 (10th Cir. 2002) (reversing district court's decision to dismiss RICO complaint for failure to state a claim). Granting a motion to dismiss is "a harsh remedy which must be cautiously studied, not only to

effectuate the spirit of the liberal rules of pleading but also to protect the interests of justice." *Morse v. Regents of University of Colorado*, 154 F.3d 1124, 1127 (10th Cir. 1998). Thus, in ruling on a motion to dismiss for failure to state a claim, it is not appropriate to look outside the pleadings themselves and consider additional facts alleged by the moving party. *Weiner v. Klais & Co., Inc.*, 108 F.3d 86, 88-89 (6th Cir. 1997).

To the extent Respondent has attached inadmissible facts and documents to its Motion, the Administrative Law Judge may appropriately consider the Motion under the Board's summary judgment standard. The Board has rejected any summary judgment procedure akin to the procedure set forth in Rule 56(e) of the Federal Rules of Civil Procedure, under which a moving party can set forth its version of the facts and the opposing party must admit or controvert those facts.² Because the Board's rules do not provide for pre-trial discovery (*KIRO, Inc.*, 311 NLRB 745, 746, n.4 (1993); *United States Postal Service*, 311 NLRB 254, 254 n.3 (1993), *Krieger-Ragsdale & Co., Inc.*, 159 NLRB 490, 495 (1966), *enfd.*, 379 F.2d 517 (7th Cir. 1967), *cert. denied*, 389 U.S. 1041 (1968)), the Board has held that summary judgment proceedings are governed by the Board's Rules and Regulations, and not by the Federal Rules of Civil Procedure. *KIRO, Inc.*, 311 NLRB at 746. Under the Board's Rules and Regulations, a motion for summary judgment or dismissal must be denied where the pleadings indicate that there is a genuine issue of material fact. Board's Rules and Regulations § 102.24.

² Section 10(b) of the Act states that Board proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure "so far as practicable." Respondent's statement that "this tribunal is obligated to conduct this hearing" under the Federal Rules of Civil Procedure is an overstatement. (Motion to Dismiss at 10) To the extent that the pleading standards set forth in § 102.15 of the Board's Rules and Regulations differ from those set forth in Rule 8 of the Federal Rules of Civil Procedure, the Board's Rules and Regulations govern these proceedings.

Thus, it is well-settled that the General Counsel is not required to set forth precise facts through affidavits or other documentary evidence to show that a genuine issue for hearing exists. *KIRO, Inc.*, 311 NLRB at 746; *United States Postal Service*, 311 NLRB at 254 n.3. Instead, the General Counsel may rely upon the allegations in the Complaint, Respondent's denial of these allegations in its Answer, and general averments that factual issues exist requiring a hearing. *KIRO, Inc.*, 311 NLRB at 745-746, 745 n.3; *United States Postal Service*, 311 NLRB at 254, n.2. *Cf. Fox-Art Theatres*, 290 NLRB 885, 885 (1988) (where Respondent admits allegations and fails to state specifically the basis for disagreement with the backpay specification, summary judgment is appropriate). Based on these principles, and as discussed *infra*, summary judgment is wholly inappropriate in this case.

B. Disposition of this Case at This Early Stage is Inappropriate

In accordance with the requirements of § 102.15 of the Board's Rules and Regulations, the Complaint allegations are sufficient to put Respondent on notice of the specific "acts which are claimed to constitute unfair labor practices." Further, accepting all factual allegations to be true, these allegations are sufficient to support a claim for relief. *See Detroit Newspapers*, 330 NLRB at 524, n.7.

1. The Complaint's Independent § 8(a)(1) Allegations Clearly State a Claim

Paragraphs 6 and 9 of the Complaint allege that Respondent violated § 8(a)(1) of the Act by "ma[king] coercive statements to its employees that it would remove or had removed work from the Unit because employees had struck" and by "threatening or impliedly threatening that the Unit would lose additional work in the event of future strikes." Paragraph 6 of the Complaint enumerates five statements made on specific

dates and at specific locations, by admitted, named high level managers of Respondent, all of whom linked the decision regarding the location of work to past strikes or potential future strikes by unit employees.

Such statements, if proven, would clearly violate § 8(a)(1). See, e.g., *Detroit Newspapers*, 330 NLRB 524, 524, n.1 (2000). See also *General Electric Co.*, 215 NLRB 520, 520-21 (1974). Indeed, the Board has held that an employer violates § 8(a)(1) by threatening to withhold work opportunities because of employees' exercise of § 7 rights. See, e.g., *Dorsey Trailers, Inc.*, 327 NLRB 835, 851 (1999) (threat to close plant if employees went on strike), *enfd. in pertinent part*, 233 F.3d 831 (4th Cir. 2000); *Kroger Co.*, 311 NLRB 1187, 1200 (1993) (threat to put plan to build a new freezer facility on hold), *affd. mem.*, 50 F.3d 1037 (11th Cir. 1995). Further, employer "predictions" of loss of customers due to unionization or strike disruptions without any factual basis amount to unlawful threats. See, e.g., *Tawas Indus.*, 336 NLRB 318, 321 (2001) (no objective basis for prediction of loss of customers due to fear of strikes in the event that the employees' independent union affiliated with a particular international union).

The Respondent's claims based on *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969), are evidentiary claims that cannot be considered in a motion to dismiss. In *Gissel*, the Supreme Court defined the boundary between employer speech protected under § 8(c) of the Act and threats of reprisals violating § 8(a)(1) of the Act. The Court ruled that employer "predictions" of the consequences of unionization are privileged under § 8(c) only if they are "carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control[.]"

Id. As the Court further explained, “threats of economic reprisal to be taken solely on [the employer’s] own volition” violate § 8(a)(1). *Id.* at 619 (citation omitted).

Respondent denies substantially all of the allegations of paragraphs 6 and 9 of the Complaint, specifically disputing whether those statements were “carefully phrased based on objective fact,” and whether the statements concerned “demonstrably probable consequences beyond [Respondent’s] control” (as opposed to actions taken on Respondent’s own volition). *Gissel*, 395 U.S. at 618-19. Its assertions, however, are based on factual assertions and out-of-court statements outside the parameters of the Complaint. Hence, they provide no support for Respondent’s Motion to Dismiss. As the record evidence will show, Respondent’s statements, as alleged, were not based on consequences “beyond its control,” but rather constituted threats of reprisal “to be taken solely on [Respondent’s] own volition.”

As the foregoing demonstrates, there is ample authority for concluding that Respondent’s alleged unlawful statements linking decisions about the location of work to past strikes or potential future strikes by its Puget Sound unit employees interfered with employees’ rights in violation of § 7 of the Act. Counsel for the Acting General Counsel therefore respectfully requests that Respondent’s motion to dismiss the allegations concerning its violation of § 8(a)(1) of the Act for failure to state a claim be denied.

**2. The Complaint Properly States that Respondent
Has Discriminated Against Its Employees
Based on Their Union and Other Protected Conduct**

Respondent does not deny that it decided in October 2009 to operate a second final assembly line for its 787 Dreamliner using employees not represented by the

Union. Nor does Respondent deny announcing this decision to its entire workforce, or that it linked that decision to the prior exercise by certain of its employees of their right to strike. Instead, Respondent argues that the Complaint fails to adequately state a claim only because it fails to allege specific harm that its action will have on its workforce. (Motion to Dismiss at 3, 18-19).

As a preliminary matter, the Board's notice pleading requirements simply do not require a delineation of the specific effects of Respondent's conduct. See *Piqua Munising Wood Prods. Co.*, 109 F.2d at 557. Further, even if the full effects of Respondent's decision are not wholly felt at this time because the decision has not yet been completely implemented, Board law makes clear that a discriminatory decision about where to place work may alone constitute discrimination with respect to unit employees' terms and conditions of employment in violation of § 8(a)(3), even where there has been no actual financial loss, and even where there has been no *immediate* impact on the discriminatees. *Pittsburg & Midway Coal Mining Co.*, 355 NLRB No. 197 (2010); *Adair Standish Corp.*, 290 NLRB 317, 318-19 (1988), *enfd. in pertinent part*, 912 F.2d 854 (6th Cir. 1990).

For example, the Board has found that an employer's diversion of work from a newly organized plant to a non-union plant for unlawfully motivated reasons violated § 8(a)(3) of the Act even though there was no immediate impact on unit employees. *Adair Standish Corp.*, 290 NLRB at 318-19 (1988). In *Adair Standish*, the employer refused to take delivery of a new press at a newly organized plant and instead installed the press at a nonunion plant for unlawful reasons. *Id.* The Board found a § 8(a)(3)

violation, reasoning that "diversion of the new press from [the newly organized plant] could reasonably result in diversion of new work from [that plant]." *Id.* at 319.

The claim clearly alleged in the Complaint is that, but for the Respondent's discriminatory motive, the second final assembly line and supply lines work would have been assigned to the Unit employees. At trial, the Acting General Counsel will demonstrate that, as in *Adair Standish*, by placing that work in South Carolina, work that Unit employees otherwise would have performed, is being diverted to non-Unit employees in retaliation for their exercise of § 7 rights and to discourage them from exercising these rights in the future. Thus, Respondent's decision deprives bargaining Unit employees of opportunities to work on what Respondent touts as its "latest generation of commercial aircraft, using lightweight composite materials to create one of the most fuel-efficient, technologically advanced passenger planes in the world." (Motion to Dismiss at 4). Even assuming for the sake of argument that there has not yet been a financial impact on any Unit employee or prospective Unit employee, the fact that the employees have not yet experienced a financial impact is no defense for a violation of § 8(a)(3). See *Pittsburg & Midway Coal Mining Co.*, 355 NLRB No. 197, slip op. at 5, n.8.

3. The Complaint is Consistent with Supreme Court Precedent

As noted above, the Complaint alleges that Respondent's discriminatory actions were undertaken because of its employees' exercise of their § 7 rights and also that those actions were inherently destructive to their § 7 rights. Respondent essentially argues that, as a matter of law, its consideration of the potential for future strikes in deciding where to place the second final assembly line and supply lines was privileged

under the United States Supreme Court's decisions in *American Ship Building Co. v. NLRB*, 380 U.S. 300 (1965) (permitting preemptive lockout), and *NLRB v. Brown Food Store*, 380 U.S. 279 (1965) (permitting preemptive lockout and use of temporary replacements in the face of a whipsaw strike). Respondent cites those cases for the proposition that employers may legitimately blunt the effectiveness of anticipated strikes. (Motion to Dismiss at 22). However, the holdings of *American Ship Building* and *Brown* – both of which involved employers' actions taken in response to the actual likelihood of an imminent strike – cannot be extended to legitimize any actions by employers to secure themselves against wholly speculative future strikes.

Indeed, the Board has rejected attempts by employers to argue for such extensions. For example, in *National Fabricators*, 295 NLRB 1095, 1095 (1989), *enfd*, 903 F.2d 396 (5th Cir. 1990), *cert. denied*, 498 U.S. 1024 (1991), the Board rejected an employer's attempt to use *Brown* and other lockout cases to justify the layoff of employees it believed were likely to honor a picket line in the future. *Id.* The Board reasoned that disfavoring employees who would engage in union activities violated § 8(a)(3). *Id.* Thus, *American Ship Building* and *Brown* are inapposite here, as Respondent's actions were taken in retaliation for past strikes and to secure itself against wholly speculative future strikes.

Further, Respondent is simply wrong when it argues no § 8(a)(3) violation can be found because the Complaint does not allege facts that would establish that it harbored animus toward employees' protected activities. The allegations of paragraphs 6 and 9 of the Complaint, if accepted as true, would be sufficient to establish animus toward employees' union activities as well as independent violations of § 8(a)(1). Moreover,

Respondent's "inherently destructive" conduct, once proven, will itself establish discriminatory intent. *NLRB v. Erie Resistor Corp.*, 373 U.S. 221 (1963).

4. The Alleged Contractual Waiver Does Not Privilege Conduct that Violates § 8(a)(3)

Respondent argues that the Complaint must be dismissed because a clause in the parties' collective bargaining agreement concerning Respondent's right to decide where to perform work precludes a finding that its placement of the second final assembly line and supply lines in South Carolina violated § 8(a)(3) as a matter of law. Such a claim amounts to an improper attempt to seek dismissal of the Complaint for failure to state a claim based on facts beyond those contained in the Complaint. Further, to the extent Respondent claims that this language privileges it to base work location decisions on discriminatory motives, the Acting General Counsel vigorously disputes that claim.

Respondent's assertion that the contractual waiver permits it to decide the location of work without bargaining with the Union does not defeat the Complaint. It is settled law that "[an employer's] bargaining obligations to the Union are distinct³ from its legal duty not to discriminate against strikers...the legal theories are fundamentally different." *Peerless Pump Co.*, 345 NLRB 371, 374 (2005). In fact, the Supreme Court has distinguished conduct that, while removed from § 8(a)(5)'s protection, nonetheless will violate § 8(a)(3) if "motivated by antiunion animus." *First National Maintenance Corp.*, 452 U.S. 666, 682 (1981) (*citing Textile Workers v. Darlington Co.*, 380 U.S. 263

³ It is for this reason that cases that rely on an analysis of § 8(a)(5) obligations are irrelevant to complaints containing only §§ 8(a)(1) and 8(a)(3) charges. *See NLRB v. Adco Electric*, 6 F.3d 1110, 1116 (5th Cir. 1993), *enforcing Adco Electric*, 307 NLRB 1113, 1116 (1992) (duty to bargain irrelevant where case alleges discrimination because of protected concerted activities; there is no refusal to bargain allegation).

(1965)). It is also well established that an "employer cannot exercise contractual rights to punish employees for protected activity." *RGC (USA) Mineral Sands, Inc. v. NLRB*, 281 F.3d 442, 450 (4th Cir. 2002); *Reno Hilton Resorts v. NLRB*, 196 F.3d 1275, 1281 (D.C. Cir. 1999).

Thus, a contractual privilege to decide where to place the second final assembly line and the supply lines without bargaining would not privilege Respondent to place the work in South Carolina for the discriminatory reasons alleged in the Complaint. Counsel for the Acting General Counsel respectfully requests that the Administrative Law Judge deny Respondent's Motion to Dismiss the allegations that Respondent violated § 8(a)(3) of the Act for failure to state a claim for which relief can be granted.

III. RESPONDENT'S MOTION TO STRIKE SHOULD BE DENIED

Respondent has requested that the Administrative Law Judge "strike" paragraph 13(a) of the Complaint, which seeks an order requiring Respondent to have the bargaining-unit employees operate the second final assembly line in the State of Washington, utilizing supply lines maintained by bargaining-unit employees in Seattle, Washington, and Portland, Oregon. Respondent has not (and cannot) provide any cogent rationale for expecting the Administrative Law Judge to preemptively declare that the remedy sought is inappropriate. Striking a portion of the remedy sought by the Acting General Counsel before any evidence has been taken and before any decision on the merits of the case is manifestly inappropriate. Indeed, Respondent's insistence that the remedy sought is "profoundly unjust" is frankly puzzling; surely, in order to determine how just or otherwise appropriate the requested remedy may be requires an adjudication of the underlying dispute.

Regardless of Respondent's arguments to the contrary, § 10(c) of the Act authorizes the Board to order "such affirmative action ... as will effectuate the policies of [the] Act." The Supreme Court has explained that "the relief which the statute empowers the Board to grant is to be adapted to the situation which calls for redress." *MacKay Radio & Telegraph Co.*, 304 U.S. 333, 348 (1938). In other words, the Board has broad discretion to craft an appropriate remedy based on the facts of each case. *Excel Case Ready*, 334 NLRB 4, 5 (2001). Once a complaint has issued, the authority to craft a remedy rests with the Board, and the Board's Administrative Law Judges have only limited authority to restrict the presentation of evidence in support of particular remedies, including remedies sought by parties other than the General Counsel.⁴ *Kaumagraph Corp.*, 313 NLRB 624, 624-25 (1994); *Sunland Construction Co.*, 311 NLRB 685, 706 (1993). Accordingly, "the issue of whether the sought remedy or any other remedy is appropriate 'is best determined following a hearing.'" *Sutter Lakeside Hosp.*, JD(SF)-20-94 at 1 (1994) (describing the basis for an Administrative Law Judge's decision to deny a motion to strike the remedy sought in a complaint).

Moreover, in cases involving discriminatory transfers of operations, the Board's usual practice is to require as a remedy the restoration of the *status quo ante*. In fact, the remedy sought by the Acting General Counsel here is the *standard* remedy for a case such as this. See *Lear Siegler, Inc.*, 295 NLRB 857, 861 (1989). Thus, in the instant case, if the second assembly line would have been located in the State of Washington, with its supply lines in Seattle, Washington, and Portland, Oregon, but for

⁴ To the extent the Board has delegated to the Administrative Law Judge the right to recommend remedies, that authority is limited to expanding the remedy to comport with recommended findings of violations, and does not authorize preempting the Board's consideration of an issue. See, e.g., *Redd-I, Inc.*, 290 NLRB 1115, 1118-19 (1988).

Respondent's alleged discriminatory conduct, restoration of the second final assembly line and the supply lines in those locations is presumptively an appropriate remedy.

Respondent may undertake at trial to demonstrate that such a requested remedy should be denied because it would be unduly burdensome. *See Lear Siegler*, 295 NLRB at 861. Respondent, however, bears the evidentiary burden of proving burdensomeness. *See, e.g., George A. Hormel & Co.*, 301 NLRB 47, 47 (1991). It obviously cannot carry that burden on a motion to dismiss before the adducement of any evidence, and its unsupported assertions of burdensomeness certainly do not warrant striking the requested remedy.⁵ Rather, such claims must be litigated in an evidentiary hearing, so that the Board can decide the appropriate remedy given the facts of the case, as required under § 10(c) of the Act. *Lear Siegler*, 295 NLRB at 861. Moreover, Respondent bears the burden of proving its affirmative defense that the remedy sought is inappropriate.

Respondent has cited no precedent (nor has Counsel for the Acting General Counsel located any) in which an Administrative Law Judge (or the Board) has restricted the remedy sought before a decision has been made with respect to the merits of the underlying unfair labor practice charge. This is unsurprising, considering the common-sense advisability of adducing facts and making a decision on the merits of a charge before any remedies are foreclosed. Counsel for the Acting General Counsel

⁵ To the extent Respondent disagrees that it would have placed the line in Washington, even absent its consideration of its employees' union and other protected conduct, that is a claim going to the merits of the Complaint, to which it may adduce any relevant supporting evidence at trial. The Respondent cannot, at this stage, however, legitimately argue that the Administrative Law Judge determine the scope and form of the correct remedy, when that judgment requires weighing the evidence that the Respondent has not provided.

therefore respectfully requests that Administrative Law Judge Anderson deny Respondent's ill-conceived motion to strike paragraph 13(a) of the Complaint.

IV. CONCLUSION

For the reasons set forth above, the Complaint fully complies with the Board's notice pleading requirements, and its allegations, when borne out by the evidence, are sufficient to establish a violation of the Act. Dismissal of the Complaint for failure to state a claim is therefore inappropriate. Further, striking the portion of the remedial relief requested by the Acting General Counsel at this stage of the proceedings, when no evidence has yet been adduced, as requested by Respondent, would also be inappropriate in view of the Board's duty to craft a remedy based on the facts of the case. Counsel for the Acting General Counsel therefore respectfully requests that the Administrative Law Judge deny Respondent's motion to dismiss for failure to state a claim and its motion to strike a portion of the remedial relief sought by the Acting

General Counsel. Counsel for the Acting General Counsel further request that an evidentiary hearing regarding all matters raised in the Complaint in this matter proceed.

DATED at Seattle, Washington, this 21st day of June, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mara-Louise Anzalone', written over a horizontal line.

Mara-Louise Anzalone

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Acting General Counsel's Opposition to Respondent's Motion to Dismiss and Motion to Strike was served on the 21st day of June, 2011, on the following parties:

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Congress of the United States
House of Representatives

June 6, 2011

Mr. Lafe E. Solomon
Acting General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D. C. 20570

Dear Mr. Solomon:

As Chairman of the Labor, Health and Human Services, Education and Related Agencies Appropriations Subcommittee, I take my oversight responsibilities very seriously. And while that most often involves matters of a fiscal nature, it is also my role to vigorously address any impropriety and to prevent any abuse of authority or policy overreach from occurring within any agency under the jurisdiction of this subcommittee.

I am writing regarding the National Labor Relations Board's ("NLRB") actions in response to a decision by The Boeing Company ("Boeing") to locate its new 787 Dreamliner manufacturing facility in Charleston, South Carolina. In making this decision, Boeing sought to achieve economic competitiveness for its global customer base, create jobs and an economic boom to a state that has nearly 10% unemployment, and maintain its status as a world leader in the aerospace industry. Boeing has a strong record of providing good-paying jobs for American workers, including in my home-state of Montana, and for helping keep America safe. This is exactly the type of private enterprise expansion our economy needs to drive itself through a still-sluggish recovery.

I believe the NLRB's decision to issue a complaint against Boeing in this matter represents a complete breach of the Federal government's role in regulating private industry and that the remedy cited therein is extraordinary and unprecedented. The remedy provided for in this complaint would require Boeing to move the second manufacturing line to the state of Washington. It is more than troubling to me that any agent of the Federal government would have the audacity to seek to overturn legitimate, core business decisions of a private enterprise. Should you succeed in this complaint, not only would Boeing have to abandon the over \$1 billion it has currently spent on this facility over the last 17 months, it would also surely need to spend considerably more to build new capacity in Washington. The lost investment and delay in time would significantly impair the company's ability to meet customer demands and commitments for existing orders.

Your complaint, Mr. Solomon, strikes at the heart of Boeing's respected business model, and is reportedly already having a chilling effect on entity's who are considering constructing new facilities in the United States. At a time when this economy needs all the investment it can get, this draconian remedy sends exactly the wrong message to all businesses, large and small, and creates an overwhelming disincentive to new economic investment.

In a recent statement you said that "there is nothing remarkable or unprecedented about the complaint issued against the Boeing Company on April 20... [t]he complaint involves matters of fact and law that are not unique to this case....". I do find this complaint remarkable, and I am seriously concerned with the use of agency resources to pursue such an extraordinary and unusual remedy given the detrimental economic impact it is certain to cause. At the very least, the NLRB needs to articulate a clear basis for this complaint.

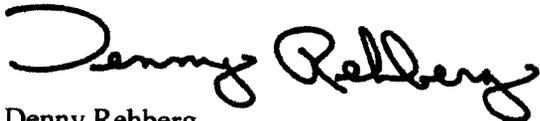
Therefore, I am requesting examples of other complaints where the Office of General Counsel has made similar allegations that were:

1. Based upon an entity's decision regarding where to locate new work or a new production/manufacturing line, rather than the transfer of existing work (which is the case with Boeing), and
2. Made in absence of the entity being formally accused or cited for taking adverse actions against union employees.

Please also provide information regarding the resolution of such cases, including final remedies, if any.

Thank you very much for your timely response to my request.

Sincerely,



Denny Rehberg

Chairman

House Appropriations Committee

Subcommittee on Labor, Health and Human Services, Education and Related Agencies