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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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2011 MAY 31 P 12:30
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May 19, 2011

Mr. Lafe Solomon
Acting General Counsel
Office of the General Counsel
National Labor Relations Board
1099 14th St. NW
Washington, DC 20570-001

Dear Mr. Solomon:

We are writing in regard to the April 20th complaint filed by your office in a case involving the Boeing Company and the International Association of Machinists. The question at issue in this case is a critically important one: whether workers who exercised their rights under the law faced illegal discrimination and retaliation. This is a charge of serious misconduct that affects the rights of thousands of hardworking people.

The complaint has only recently been filed, after what we understand were months of extensive, but unfortunately unsuccessful, attempts at conciliation. The case will now proceed through a well-established adjudicative process where the facts of the case and the application of the law to those facts will be determined by an Administrative Law Judge, the National Labor Relations Board (NLRB) and – if the parties desire – the federal courts.

We do not write to express any opinion about the proper outcome of this case. However, we do feel strongly that both parties have the right for this important issue to be decided in the due course of the administration of justice. This case should be determined based on the facts and the law, not based on politics.

That is why we feel compelled to respond to the letter that you recently received from several members of the Health, Education, Labor and Pensions Committee (the “May 3rd letter”) asking that you reveal the legal arguments and strategy that you intend to pursue in this case to members of Congress. We believe that it would be inappropriate for the General Counsel’s office to compromise its litigating position by detailing its legal strategy in this manner.

Just as NLRB is an independent adjudicatory agency, the NLRB General Counsel is an independent prosecutorial office responsible for the investigation and prosecution of unfair labor practice cases. As with any independent agency or entity, political pressure from elected officials should not play a role in how you fulfill your duties. Indeed, if the NLRB were to improperly consider political pressure or other extraneous factors in adjudicating this case, it could ultimately undermine the legal validity of the decision. Instead, we urge you to evaluate this case, and every other case you handle in your capacity as Acting General Counsel, based on the facts and your considered opinion of the law.

We also want to address statements that have been made implying that your actions in the present case will jeopardize your pending nomination before this Committee. We would like to take this opportunity to assure you that we respect the independence of the NLRB and have great respect for the work that you have done in your more than 30 years as a career public servant at the Board. We assure you that we will do all we can to ensure that your nomination before this Committee will be considered based on your qualifications for the job.

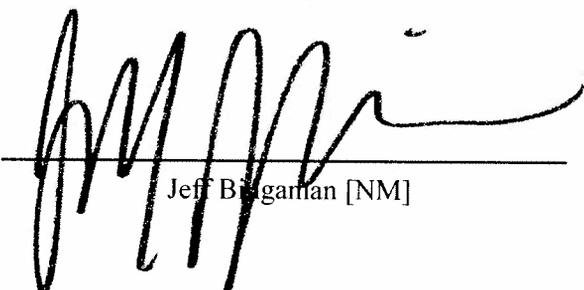
We thank you for your attention to this matter.



Tom Harkin [IA]
Chairman



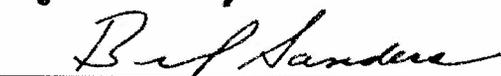
Barbara A. Mikulski [MD]



Jeff Bingaman [NM]



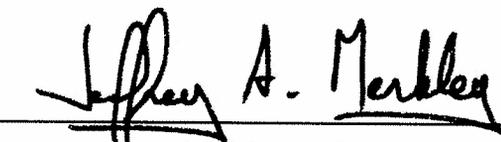
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