

**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 MOTION  
FOR ENTRY OF A WRITTEN PRODUCTION ORDER  
OR, IN THE ALTERNATIVE, FOR AN ORDER  
TO SHOW CAUSE AS TO WHY THE ACTING GENERAL  
COUNSEL'S PROPOSED WRITTEN ORDER IS INACCURATE**

For the reasons set forth below, Counsel for the Acting General Counsel requests that the Administrative Law Judge enter an order addressing Subpoena Duces Tecum B-648185 (the "Subpoena"), which the Acting General Counsel issued and Respondent petitioned to revoke, and directing: (1) Respondent and the Charging Party to show cause within one week as to why the proposed order submitted herewith ("Proposed Order") does not accurately reflect the Administrative Law Judge's oral rulings to date, and (2) Counsel for the Acting General Counsel to respond within one additional week to any objections to the Proposed Order. Upon receipt of the parties' briefing, we request that the Administrative Law Judge issue the Proposed Order or one properly amended to accurately and clearly reflect the sum of the Judge's orders to date on the disputed subpoena issues.

This proposed process will guarantee the parties due process, and help insure that this complex litigation proceed as efficiently as possible based upon the Administrative Law Judge's actual rulings, rather on the possibly mistaken and inconsistent views of each of the parties. That there will likely be further additional disputes to resolve between the parties before this subpoena matter is ripe for review by the Board or the district court only underscores the need for this case to proceed on a clear record.

#### **I. PROCEDURAL BACKGROUND**

The Administrative Law Judge has ruled orally on the Respondent's Petition to Revoke the Subpoena. The Subpoena contains over fifty specific Items, including numerous subparts, and the parties' on and off-the-record discussion of its numerous items took several weeks. Ultimately, the overwhelming majority of items were not resolved between the parties and the Administrative Law Judge was called upon to rule on them on the record over multiple days. While, as noted by the Administrative Law Judge, additional rulings and subpoenas for documents may be necessary in the future, the Judge's rulings have addressed many of the core subpoena issues presented thus far in this dispute.

The circumstances of this ongoing subpoena dispute, including the likely potential of appeals to the Board and/or enforcement proceedings in district court, require a streamlining for those fora of the specific rulings by the Administrative Law Judge articulating the bases for Respondent's compliance responsibilities.

## **II. A WRITTEN ORDER IS APPROPRIATE IN VIEW OF THE UPCOMING SUBPOENA ENFORCEMENT PROCEEDINGS**

Administrative Law Judges have discretion to issue verbal, as opposed to written, orders. NLRB Division of Judges Bench Book § 12-620 (citing 29 CFR §102.35). In exercising this discretion, Administrative Law Judges appropriately consider all the relevant circumstances attendant to §11 subpoenas, including the complexity of the dispute, the number of rulings or components of the rulings that define any continuing obligation of a party to produce subpoenaed records, and the possibility that the Board and/or the federal courts will be asked to consider a party's objections to those Administrative Law Judge rulings and to decide whether further compliance can legally be required. Where, as here, such further litigation is likely, there should be no doubt as to exactly what rulings have been made and, if there are several components to the Administrative Law Judge's order, how those parts relate to each other and to the whole. In this case, the Judge's rulings range across hundreds of pages of transcripts occurring over multiple days. This has the potential to create a frustrating and unnecessarily lengthy exercise for the Board and/or the district court.

A written order should eliminate, or at least reduce, disputes between the parties over what the Administrative Law Judge's oral decision in open court entailed. See, e.g., *McGhee v. Arkansas State Bd. of Collection Agencies*, 368 Ark. 60, 243 S.W.3d 278 (2006). See also *State ex rel. Kaufman v. Zakaib*, 207 W. Va. 662, 535 S.E.2d 727 (2000) (even where it is not required, the law favors written orders). This is particularly important, as the Administrative Law Judge's order are due deference. As such, subpoena enforcement in this matter is far more likely to proceed expeditiously and accurately with a written order issued from this tribunal.

There is likely no all-party agreement here on the Judge's rulings to date. Indeed, when Counsel for the Acting General Counsel has attempted to reach consensus with Respondent's counsel on its understanding of certain of the Administrative Law Judge's rulings, Respondent's counsel expressed it would be inappropriate to do so. Thus, it is reasonable to be concerned that disputes over the Judge's rulings on the subpoena would, in fact, occur before the Board and district court.

Moreover, Respondent has not been willing to represent that it is satisfied with the Administrative Law Judge's rulings, which it has suggested are mere "recommendations" to the district court. (Tr. 741-42; 25-3) ("Obviously ultimately what's entered will be determined by the Federal District Court, but we think that a ruling by you will be in aid of that"). To ensure that the Administrative Law Judge's rulings on the Subpoena can be afforded their due weight, in face of Respondent's effort to have them "reviewed," Counsel for the Acting General Counsel moves that these rulings be clearly stated in writing. Counsel for the Acting General Counsel has already undertaken to craft a Proposed Order (see attached).

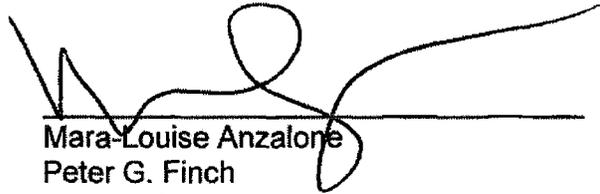
### **III. CONCLUSION**

For the foregoing reasons, Counsel for the Acting General Counsel respectfully urges the Administrative Law Judge to enter an Order directing: (1) Respondent and the Charging Party to show cause within one week as to why the Proposed Order does not accurately reflect the Administrative Law Judge's oral rulings to date; and (2) Counsel for the Acting General Counsel to respond within one additional week to any objections to the Proposed order. Upon receipt of the parties' pleadings, we request

that the Administrative Law Judge issue the Proposed Order, or one properly amended to accurately and clearly reflect the sum of the Judge's orders to date on the disputed subpoena issues on Subpoena Duces Tecum B-648185.

**DATED** at Seattle, Washington, this 30<sup>th</sup> day of August, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mara-Louise Anzalone', is written over a horizontal line. The signature is stylized with a large loop and a long tail that extends to the right.

Mara-Louise Anzalone  
Peter G. Finch  
Rachel Harvey  
Counsel for the Acting General Counsel  
National Labor Relations Board - Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174  
Telephone: 206.220.6301  
Facsimile: 206.220.6305  
Email: mara-louise.anzalone@nrlb.gov  
peter.finch@nrlb.gov  
rachel.harvey@nrlb.gov

## CERTIFICATE OF SERVICE

I hereby certify that a copy of Acting General Counsel's Motion for Entry of a Written Production Order, or, in the Alternative, for an Order to Show Cause as to Why the Acting General Counsel's Proposed Written Order Is Inaccurate was served on the 30<sup>th</sup> day of August, 2011, on the following parties:

### E-File:

The Honorable Clifford H. Anderson  
Administrative Law Judge  
National Labor Relations Board, Division of Judges  
901 Market Street, Suite 300  
San Francisco, CA 94103-1779

### E-mail:

Richard B. Hankins, Attorney  
McKENNA LONG & ALDRIDGE LLP  
303 Peachtree St. N.E., Suite 5300  
Atlanta, GA 30308-3265  
[rhankins@mckennalong.com](mailto:rhankins@mckennalong.com)

Drew E. Lunt, Attorney  
McKENNA LONG & ALDRIDGE LLP  
303 Peachtree St. N.E., Suite 5300  
Atlanta, GA 30308-3265  
[dlunt@mckennalong.com](mailto:dlunt@mckennalong.com)

William J. Kilberg, Attorney  
GIBSON DUNN & CRUTCHER LLP  
1050 Connecticut Ave., N.W.  
Washington, D.C. 20036-5306  
[wkilberg@gibsondunn.com](mailto:wkilberg@gibsondunn.com)

Alston D. Correll, Attorney  
McKENNA LONG & ALDRIDGE LLP  
303 Peachtree St. N.E., Suite 5300  
Atlanta, GA 30308-3265  
[acorrell@mckennalong.com](mailto:acorrell@mckennalong.com)

Eugene Scalia, Attorney  
GIBSON DUNN & CRUTCHER LLP  
1050 Connecticut Ave., N.W.  
Washington, D.C. 20036-5306  
[escalia@gibsondunn.com](mailto:escalia@gibsondunn.com)

Matthew D. McGill, Attorney  
GIBSON DUNN & CRUTCHER LLP  
1050 Connecticut Ave., N.W.  
Washington, D.C. 20036-5306  
[mmcgill@gibsondunn.com](mailto:mmcgill@gibsondunn.com)

Paul Blankenstein, Attorney  
GIBSON DUNN & CRUTCHER LLP  
1050 Connecticut Ave., N.W.  
Washington, D.C. 20036-5306  
[pblankenstein@gibsondunn.com](mailto:pblankenstein@gibsondunn.com)

Daniel J. Davis, Attorney  
GIBSON DUNN & CRUTCHER LLP  
1050 Connecticut Ave., N.W.  
Washington, D.C. 20036-5306  
[ddavis@gibsondunn.com](mailto:ddavis@gibsondunn.com)

David Campbell, Attorney  
SCHWERIN CAMPBELL BARNARD  
IGLITZIN & LAVITT LLP  
18 W. Mercer St., Suite 400  
Seattle, WA 98119-3971  
[campbell@workerlaw.com](mailto:campbell@workerlaw.com)

Lawrence R. Schwerin, Attorney  
SCHWERIN CAMPBELL BARNARD  
IGLITZIN & LAVITT LLP  
18 W. Mercer St., Suite 400  
Seattle, WA 98119-3971  
[schwerin@workerlaw.com](mailto:schwerin@workerlaw.com)

Carson Glickman-Flora, Attorney  
SCHWERIN CAMPBELL BARNARD  
IGLITZIN & LAVITT LLP  
18 W. Mercer St., Suite 400  
Seattle, WA 98119-3971  
[flora@workerlaw.com](mailto:flora@workerlaw.com)

Robert H. Lavitt, Attorney  
SCHWERIN CAMPBELL BARNARD  
IGLITZIN & LAVITT LLP  
18 W. Mercer St., Suite 400  
Seattle, WA 98119-3971  
[lavitt@workerlaw.com](mailto:lavitt@workerlaw.com)

Jennifer Robbins, Attorney  
SCHWERIN CAMPBELL BARNARD  
IGLITZIN & LAVITT LLP  
18 W. Mercer St., Suite 400  
Seattle, WA 98119-3971  
[robbins@workerlaw.com](mailto:robbins@workerlaw.com)

Sean Leonard, Attorney  
SCHWERIN CAMPBELL BARNARD  
IGLITZIN & LAVITT LLP  
18 W. Mercer St., Suite 400  
Seattle, WA 98119-3971  
[leonard@workerlaw.com](mailto:leonard@workerlaw.com)

Jude Bryan, Paralegal  
SCHWERIN CAMPBELL BARNARD  
IGLITZIN & LAVITT LLP  
18 W. Mercer St., Suite 400  
Seattle, WA 98119-3971  
[bryan@workerlaw.com](mailto:bryan@workerlaw.com)

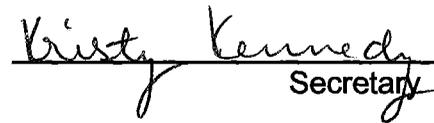
Christopher Corson, General Counsel  
INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE  
WORKERS  
9000 Machinists Pl.  
Upper Marlboro, MD 20772-2687  
[ccorson@iamaw.org](mailto:ccorson@iamaw.org)

Glen M. Taubman, Attorney  
NATIONAL RIGHT TO WORK LEGAL  
DEFENSE FOUNDATION, INC.  
8001 Braddock Road, Suite 600  
Springfield, VA 22151-2110  
[gmt@nrtw.org](mailto:gmt@nrtw.org)

Matthew C. Muggeridge, Attorney  
NATIONAL RIGHT TO WORK LEGAL  
DEFENSE FOUNDATION, INC.  
8001 Braddock Road, Suite 600  
Springfield, VA 22151-2110  
[mcm@nrtw.org](mailto:mcm@nrtw.org)

**U.S. Mail:**

Machinists District Lodge 751  
9135 15<sup>th</sup> Pl. S.  
Seattle, WA 98108-5100

  
Secretary

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO OFFICE**

**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**

**[PROPOSED] ORDER TO PRODUCE DOCUMENTS  
RESPONSIVE TO SUBPOENA DUCES TECUM B-648185**

Counsel for the Acting General Counsel caused Subpoena Duces Tecum B-648185 (the "Subpoena") to be served on Respondent The Boeing Company ("Respondent"). The Subpoena sought the production of certain documents on June 14, 2011, at the outset of the unfair labor practice hearing in the above-captioned case. On May 27, 2011, Respondent filed a petition to revoke the Subpoena and, on June 7, 2011, Counsel for the Acting General Counsel filed an opposition to Respondent's petition to revoke. On July 19, 2011, all parties submitted briefs regarding Item 52 of the Acting General Counsel's Subpoena and certain similar items of subpoenas duces tecum issued at the request of Respondent and Charging Party International Association of Machinists and Aerospace Workers District Lodge 751, affiliated with International Association of Machinists and Aerospace Workers (the "Charging Party").

Being fully advised of the matter, after considering Respondent's petition to revoke, the Acting General Counsel's opposition, the parties' briefs, and oral arguments by the parties over several days between June 23 and July 14, 2011, I have ruled and hereby order that Respondent is required to produce within 30 calendar days of this order, the documents sought in the Subpoena as limited below:<sup>1</sup>

**The Relevant Time Period**

I have carefully considered Respondent's arguments that the Subpoena is overbroad, seeks information not relevant to the material factual issues in dispute, and

---

<sup>1</sup> As discussed on the record, I will later address Respondent's claims of privilege as they are presented to me in a proper privilege log for each record asserted to be so protected, and I have issued a separate protective order crafted to address Respondent's confidentiality claims.

is unduly burdensome. In that regard, I have ruled that, unless otherwise stated, Respondent is only required to provide responsive documents for the period from January 1, 2008, to the present date. (Tr. 249:5-9)

I further rule that, subject to this limitation, and those further modifications expressly provided in this order, all the document demands in the Subpoena are relevant and neither overly broad nor unduly burdensome.

### **Items 1 through 6**

Items 1 through 6 seek the following documents and communications:<sup>2</sup>

1. Documents and communications showing the identity of the individuals responsible for making the decisions to undertake each of the following actions:
  - (a) to purchase Vought;
  - (b) to establish and operate the second 787 final assembly line Respondent determined was necessary to meet demand and contractual deadlines for the 787 ("Supplemental Line");
  - (c) to place the Supplemental Line in South Carolina; and
  - (d) to meet with representatives of the Union and District Lodge 751 over the location of the Supplemental Line.
2. Documents and communications showing the identity of the individuals who made recommendations regarding the decisions to undertake each of the actions referred to in Item 1.
3. Regardless of date, such documents, including, but not limited to, notes, memoranda, drafts written memorializations of oral communications, and reports, relating to the decisions to undertake the actions set forth in Item 1, including, but not limited to, any study, analysis or recommendation of the various options.
4. Documents reflecting the identity and Respondent positions of the individuals who prepared any document identified in Item 3.
5. Documents, including, but not limited to, meeting agendas, notes, and meeting minutes, reflecting what was discussed,

---

<sup>2</sup> The Definitions and Instructions for Use appearing on pages 1 through 4 of the Attachment to the Subpoena are incorporated herein by reference.

what was said and by whom, and any information otherwise disseminated, during all meetings or conversations regarding any of the decisions to undertake the actions set forth in Item 1.

6. Documents reflecting the identity and Respondent positions of the individuals who prepared any document identified in the Item 5.

Insofar as Items 1 through 6 seek documents and communications relating to the decision to purchase Vought, I rule that Respondent is required to provide only: (1) responsive documents and communications that were reviewed or relied upon by Respondent's Board of Directors in making that decision, (2) responsive documents and communications that were reviewed or relied upon by Respondent's Chief Executive Officer in making recommendations to the Board of Directors about that decision, and (3) responsive documents and communications that were reviewed or relied upon by individuals who made presentations relating to the decision to purchase Vought to Respondent's Board of Directors.<sup>3</sup> (Tr. 202:17—203:7; 211:22—212:12)

Insofar as Items 1 through 6 seek documents and communications relating to the decisions to establish and operate the Supplemental Line and to place the Supplemental Line in South Carolina, I rule that Respondent is required to produce only responsive documents and communications reviewed or relied upon by the President of Boeing Commercial Airplanes, Respondent's CEO, and members of Respondent's Board of Directors, including responsive documents and communications sent to those persons by the Vice President and General Manager of Boeing Commercial Airplanes. (Tr. 249:9-16)

Insofar as Items 1 through 6 seek documents and communications relating to the decision to meet with representatives of the Union and District Lodge 751 over the location of the Supplemental Line, I rule that Respondent is required to produce all responsive documents. (Tr. 264:8—265:3)

### **Item 7**

Item 7 has been withdrawn. (Tr. 270:18—271:6)

---

<sup>3</sup> It is noted that there appears to be a factual dispute among the parties concerning the number of individuals who made presentations relating to the decision to purchase Vought to Respondent's Board of Directors. Respondent contends that there was one such individual, and the Acting General Counsel and the Charging Party contend there were three. I have instructed the Acting General Counsel and the Charging Party to present evidence concerning which individuals made such presentations, if they believe Respondent should be required to produce documents reviewed or relied upon by more than one "presenter." (Tr. 208:6—209:19)

### **Item 8**

Item 8 seeks the following documents:

Documents related to Respondent's request for proposals to design and build any facility related to the Supplemental Line in South Carolina or Washington, including, but not limited to, documents related to Respondent's contracts with BE&K Building Group and Turner Construction Company to design and build structures in North Charleston, South Carolina.

I rule that Respondent must produce all documents responsive to Item 8 but may redact all information other than the dates of the responsive documents, information about whether entities responding to requests for proposals were or were not interested in the requests for proposals, and cost information appearing on the responsive documents. (Tr. 291:8-23)

### **Item 9**

The Acting General Counsel has limited Item 9 to seek the following documents and communications:

Documents and communications relied upon or reviewed in making the decision to construct a "surge line" at the Everett facility, and Respondent's decision regarding any expansion of operations related to the assembly of 787 aircraft at the Everett facility. (Tr. 294:13-17)

I rule that this item is further limited to require only the production of responsive documents and communications reviewed or relied upon by the President of Boeing Commercial Airplanes, Respondent's CEO, and members of Respondent's Board of Directors, including responsive documents and communications sent to those persons by the Vice President and General Manager of Boeing Commercial Airplanes. (Tr. 296:25—297:4)

### **Item 10<sup>4</sup>**

Item 10 seeks the following documents:

Documents announcing Respondent's intention or plan to establish and/or operate the Supplemental Line, including, but not limited to, press releases, internet postings and

---

<sup>4</sup> The parties represented on the record that there is no dispute as to the scope of the material requested in Item 10, and Respondent has indicated that it has produced or will produce all documents responsive to that item. (Tr. 297:10-20)

communications with any of its union-represented employees.

I rule that Respondent must produce all documents responsive to Item 10. (Tr. 297:10-20)

**Item 11<sup>5</sup>**

The Acting General Counsel has limited Item 11 to seek the following communications and correspondence:

For the period from January 1, 2008, through the date of filing of the charge in this matter, communications and correspondence between Respondent and any of its union-represented employees regarding a past, current or potential future strike by Respondent's union-represented employees, including, but not limited to, the e-mail sent by Chief Executive Officer Jim McNerney on October 6, 2008. (Tr. 298:21—299:4)

I rule that Respondent is required to produce the communications and correspondence sought in Item 11, as limited by the Acting General Counsel. (Tr. 299:5-7)

**Item 12<sup>6</sup>**

Item 12 seeks the following documents:

Journalism or media pieces, such as newspaper or magazine articles or recorded interviews, regarding the location of the Supplemental Line and/or any past, current or potential future strike by Respondent's union-represented employees for which any representative of Respondent was interviewed and/or provided information.

I rule that Respondent must produce all documents responsive to Item 12. (Tr. 299:12—300:14)

---

<sup>5</sup> The parties represented on the record that there is no dispute as to the scope of the material requested in Item 11, as limited by the Acting General Counsel, and Respondent has indicated that it has produced or will produce all documents responsive to that item. (Tr. 298:21—299:7)

<sup>6</sup> The parties represented on the record that there is no dispute as to the scope of the material requested in Item 12, and Respondent has indicated that it has produced or will produce all documents responsive to that item. (Tr. 299:12—300:14)

**Item 13<sup>7</sup>**

Item 13 seeks the following documents and communications:

Documents and communications showing Respondent's rules, regulations, guidelines, policies and/or procedures relating to communication with the media, including, but not limited to, those regarding seeking retraction, modification and/or correction of incorrect information.

I rule that Respondent must produce all documents and communications responsive to Item 13. (Tr. 302:20—303:6)

**Item 14<sup>8</sup>**

Item 14 seeks the following documents and communications:

Documents and communications showing Respondent's efforts to retract, modify or correct any portion of the documents identified in Item 12 above.

I rule that Respondent must produce all documents and communications responsive to Item 14. (Tr. 303:7-14)

**Item 15<sup>9</sup>**

Item 15 seeks the following documents and communications:

Documents and communications showing Respondent's dissemination of the content of information included in the documents identified in Item 12 above, or any portion thereof, whether by Internet, Respondent's intranet or other means.

I rule that Respondent must produce all documents and communications responsive to Item 15. (Tr. 303:15—305:2)

---

<sup>7</sup> The parties represented on the record that there is no dispute as to the scope of the material requested in Item 13, and Respondent has indicated that it has produced all documents responsive to that item. (Tr. 302:20—303:6)

<sup>8</sup> The parties represented on the record that there is no dispute as to the scope of the material requested in Item 14, and Respondent has indicated that there are no documents responsive to that item. (Tr. 303:7-14)

<sup>9</sup> The parties represented on the record that there is no dispute as to the scope of the material requested in Item 15, and Respondent has indicated that there are no documents responsive that item. (Tr. 303:15—305:2)

### **Item 16**

The Acting General Counsel has limited Item 16 to seek the following documents and communications:

For the period from January 1, 2008, through the date of filing of the charge, documents and communications showing what was said by any officer, manager, agent or other representative of Respondent at the program level at any conference, summit or other gathering with union-represented employees of Respondent regarding any past, current or potential future strike by Respondent's union-represented employees, including, but not limited to transcripts, audio or video recordings of such remarks, or any notes used in conveying such remarks. (Tr. 305:22-24; 313:14—314:10; 765:8-20)

I rule that Respondent must produce all documents and communications responsive to Item 16, as limited by the Acting General Counsel. (Tr. 311:2-6; 768:15-22; 771:13-19)

### **Item 17<sup>10</sup>**

Item 17 seeks the following documents and communications:

Documents and communications, including, but not limited to, correspondence between Respondent and its customers, relating or referring to concerns expressed by Respondent's customers over the effect of future strikes.

I rule that Respondent must produce all documents and communications responsive to Item 17. (Tr. 322:5-25)

### **Items 18 and 19**

The parties agreed to place resolution of Items 18 and 19 in abeyance pending their review of responsive documents produced by Respondent. I stated that I would not rule on those items, unless a party renewed those items and requested a ruling. Since Items 18 and 19 have not been renewed, I am not ruling that Respondent is required to produce documents responsive to those items. (Tr. 323:12-24)

---

<sup>10</sup> The parties represented on the record that there is no dispute as to the scope of the material requested in Item 17, and Respondent has indicated that it will produce all documents responsive to that item. (Tr. 322:5-25)

**Item 20**

Item 20 has been withdrawn. (Tr. 324:1-2)

**Item 21**

Item 21 seeks the following documents:

Documents relating or referring to Respondent's consideration, in its decision on the placement of the Supplemental Line, of "the potential for non-strike events to interrupt the production and delivery of the 787 aircraft, such as both man-made and natural disasters," as set forth in Respondent's July 9, 2009 position statement.

I rule that Respondent is required to produce only responsive documents and communications reviewed or relied upon by the President of Boeing Commercial Airplanes, Respondent's CEO, and members of Respondent's Board of Directors, including responsive documents and communications sent to those persons by the Vice President and General Manager of Boeing Commercial Airplanes. (Tr. 326:17-20)

**Item 22<sup>11</sup>**

The Acting General Counsel has limited Item 22 to seek the following documents:

For the period from January 1, 2008, to October 28, 2009, documents showing commercial steps taken by Respondent with any other entity or individual (other than the Union) regarding the actual or potential placement of the Supplemental Line, including, but not limited to: reports, proposals, offers, counter-offers, acceptances and/or rejections; and filings or applications for Federal, state or local permits, licenses, or registrations. (Tr. 326:21—327:2; 328:15-18; 331:20-24)

I rule that Respondent must produce all documents and communications responsive to Item 22, as limited by the Acting General Counsel. (Tr. 332:21-22)

**Item 23**

The parties agreed to place resolution of Item 23 in abeyance. I stated that I would not rule on that item unless a party renewed it and requested a ruling. Since Item

---

<sup>11</sup> Respondent has indicated that it has provided all documents responsive to Item 22 as limited by the Acting General Counsel. (Tr. 332:21—333:11)

23 has not been renewed, I am not ruling that Respondent is required to produce documents responsive to that item. (Tr. 334:24—325:13)

**Item 24<sup>12</sup>**

The Acting General Counsel has limited Item 24 to seek the following correspondence and communications:

Correspondence and communications regarding the location of the Supplemental Line, which was exchanged between the individuals who were present at negotiations between Respondent and the Union and/or Local 751 regarding the location of the Supplemental Line, as well as the superiors of those who were present at the negotiations.

I rule that Respondent must produce all correspondence and communications responsive to Item 24, as limited by the Acting General Counsel. (Tr. 343:18—344:22)

**Item 25<sup>13</sup>**

Item 25 seeks the following documents, correspondence, and communications:

Documents, correspondence and communications, including, but not limited to, meeting agendas, notes and meeting minutes, showing what was discussed, what was said and by whom, in any meeting attended by any officer, supervisor, manager, agent or other representative of Respondent with the Union and/or Local 751 regarding the location of the Supplemental Line.

I rule that Respondent must produce all documents, correspondence, and communications responsive to Item 25. (Tr. 345:8—347:7)

**Item 26**

Item 26 seeks the following documents and communications:

Regardless of date, correspondence and communications between Respondent and the Union and/or Local 751

---

<sup>12</sup> The parties represented on the record that there is no dispute as to the scope of the material requested in Item 24, as limited by the Acting General Counsel, and Respondent has indicated that it has produced or will produce all responsive documents. (Tr. 343:18—344:22)

<sup>13</sup> The parties represented on the record that there is no dispute as to the scope of the material requested in Item 25, and Respondent has indicated that it has provided all nonprivileged documents responsive to that item. As noted above in footnote 1, I will later address Respondent's claims of privilege as they are presented to me in a proper privilege log for each record asserted to be so protected, (Tr. 345:8—347:7)

regarding the need for a long-term collective bargaining agreement and/or a no-strike provision.

The Acting General Counsel has limited Item 26 to seek only responsive contracts, memoranda of understanding, and other agreements. (Tr: 350:1-4) I rule that Respondent must produce all documents responsive to this item, as limited by the Acting General Counsel, but only for the period from 1950 to the present date. (Tr. 352:24—353:2; 776:18—777:7)

### **Item 27**

Item 27 seeks the following documents:

Regardless of date, documents, correspondence and communications, including, but not limited to, meeting agendas, notes and meeting minutes, showing what was discussed, what was said and by whom, in any meeting attended by any officer, supervisor, manager, agent or other representative of Respondent with the Union and/or Local 751 regarding the need for a long-term collective bargaining agreement and/or a no-strike provision.

The Acting General Counsel has limited Item 27 to seek only responsive contracts, memoranda of understanding, and other agreements. (Tr: 350:1-4; 353:6-9) I rule that Respondent must produce all documents responsive to Item 27, as limited by the Acting General Counsel, but only for the period from 1950 to the present date. (Tr. 352:24—353:2; 776:18—777:7)

### **Item 28 and Item 29**

I have revoked Items 28 and 29. (Tr: 360:22—361:14; Tr. 370:21-25)

### **Item 30**

The parties agreed to place resolution of Item 30 in abeyance. I stated that I would not rule on that item unless a party renewed it and requested a ruling. Since Item 30 has not been renewed, I am not ruling that Respondent is required to produce documents responsive to that item. (Tr. 377:22—378:13)

### **Item 31**

Item 31 seeks the following documents and communications:

Documents and communications related to the “execution challenges” and the “inefficiencies” associated with opening

the Supplemental Line in South Carolina referred to by McNerney on October 21, 2009.

I rule that Respondent is required to produce only responsive documents and communications reviewed or relied upon by the President of Boeing Commercial Airplanes, Respondent's CEO, and members of Respondent's Board of Directors, including responsive documents and communications sent to those persons by the Vice President and General Manager of Boeing Commercial Airplanes. (Tr. 382:17-24)

**Item 32**

The Acting General Counsel has limited Item 32 to seek the following documents and communications:

Documents and communications relied upon by Respondent in making for the following statements in its document entitled, "787 Second Line Questions and Answers 10/28/09 – Final" with respect to the decision to establish the Supplemental Line in South Carolina:

- (a) that the decision would increase "long-term competitiveness and ensure[e] a sustainable stream of deliveries for [Boeing's] customers";
- (b) that the decision would make Respondent "less vulnerable to disruptions from natural and man-made events"; and
- (c) that the decision would reduce "vulnerability to delivery disruptions due to a host of factors, from natural disasters to homeland security and work stoppages." (Tr. 398:15-18; 405:5-7)

I rule that Respondent must provide documents and communications responsive to Item 32, as limited by the Acting General Counsel. (Tr. 404:15-23; 407:11-17)

**Item 33**

The Acting General Counsel has limited Item 33 to seek the following documents and communications:

Documents and communications relied upon by Respondent's Manager James Proulx in making any statements on or about December 7, 2009, to a reporter for the *Seattle Times* regarding the past or present strikes, customer complaints, "dual sourcing" and/or the decision to

establish the Supplemental Line in South Carolina. (Tr. 398:15-18; 405:5-7)

I rule that Respondent must provide documents and communications responsive to Item 33, as limited by the Acting General Counsel. (Tr. 404:15-23; 407:11-17)

**Item 34**

The Acting General Counsel has limited Item 34 to seek the following documents and communications:

Documents and communications relied upon by Respondent's Vice-President Ray Conner in making any statements on or about December 7, 2009, to a reporter for the *Seattle Times* regarding the past or present strikes, customer complaints, "dual sourcing" and/or the decision to establish the Supplemental Line in South Carolina. (Tr. 398:15-18; 405:5-7)

I rule that Respondent must provide documents and communications responsive to Item 34, as limited by the Acting General Counsel. (Tr. 404:15-23; 407:11-17)

**Item 35**

The Acting General Counsel has limited Item 35 to seek the following documents and communications:

Documents and communications relied upon by Respondent's Executive Vice President Jim Albaugh ("Albaugh") in making any statements on March 1, 2010, to *Seattle Times* reporter Dominic Gates ("Gates") regarding the past or present strikes, customer complaints, "dual sourcing" and/or the decision to establish the Supplemental Line in South Carolina, including, but not limited to, a statement that work stoppages involving Union-represented employees, as opposed to the "business climate" in Washington State or wages Respondent pays Union-represented employees, was "the overriding factor" for establishing the Supplemental Line in South Carolina. (Tr. 398:15-18; 405:5-7)

I rule that Respondent must provide documents and communications responsive to Item 35, as limited by the Acting General Counsel. (Tr. 404:15-23; 407:11-17)

### **Item 36**

The Acting General Counsel has limited Item 36 to seek the following documents and communications:

Documents and communications relied upon by Albaugh during Gates's interview of Albaugh on March 1, 2010, including, but not limited to, any transcript or recording of the interview. (Tr. 398:15-18; 405:5-7)

I rule that Respondent must provide documents and communications responsive to Item 36, as limited by the Acting General Counsel. (Tr. 414:1—415:5)

### **Item 37<sup>14</sup>**

Counsel for the Acting General Counsel has agreed to limit Item 37 to seek production of the following documents:

Documents and communications setting forth the names and addresses of all professional service providers and consultants utilized by Respondent for services related to communications with employees about union representation, collective bargaining, or placement of the Supplemental Line. (Tr. 418:13-20)

I rule that Respondent must produce all documents responsive to Item 37, as limited by the Acting General Counsel. (Tr. 422:18—423-15; 777:18—778:22)

### **Item 38**

The parties agreed to place resolution of Item 38 in abeyance. I stated that I would not rule on that item, unless a party renewed it and requested a ruling. Since Item 38 has not been renewed, I am not ruling that Respondent is required to produce documents responsive to that item. (Tr. 428:7—429:22)

### **Item 39**

I rule that Item 39 is limited to require the production of only the following documents:

Studies, reports, analyses, or conclusions regarding the asserted harm Respondent, its employees, and the State of

---

<sup>14</sup> Respondent has indicated that there are no documents responsive to Item 37 as limited by the Acting General Counsel. (Tr. 777:18—778:22)

South Carolina will likely suffer if the Board imposes the proposed remedy (Tr. 786:19-25)

**Item 40**

The Acting General Counsel has limited Item 40 to seek production of the following documents:

Documents, correspondence, and communications showing that employees other than Puget Sound Unit employees were involved prior to October 28, 2009, in the final assembly of 787 aircraft and that Respondent maintained and operated final assembly lines for 787 aircraft outside the Puget Sound region prior to October 28th, 2009. (Tr. 788:6—789:6)

I rule that Respondent must produce all documents responsive to Item 37, as limited by the Acting General Counsel. (Tr. 789:18—790:14)<sup>15</sup>

**Item 41**

I rule that Item 41 is limited to require the production of only the following documents and communications:

Documents and communications showing that Respondent's North Charleston, South Carolina, facility can only be used to operate the Supplemental Line. (Tr. 457:16—458:21)

**Item 42<sup>16</sup>**

Item 42 seeks the following documents and communications:

Documents and communications showing that any of the unfair labor practices alleged in the Complaint occurred prior to September 29, 2010.

I rule that Respondent must produce all documents and communications responsive to Item 42. (Tr. 467:18—468:13)

---

<sup>15</sup> For purposes of this proceeding, Respondent has represented that it is not claiming that the type of final assembly at issue in this proceeding was done anywhere but Everett prior to October 28, 2009, and so there would be no documents responsive to Item 40 as limited by the Acting General Counsel. The Acting General Counsel agreed on the record that Respondent's representation was a satisfactory response to Item 40. (Tr. 789:18-790:16)

<sup>16</sup> The parties represented on the record that there is no dispute as to the scope of the material requested in Item 42, and Respondent has indicated that it will produce all documents responsive to that item. (Tr. 467:18—468:13)

### **Item 43**

I ruled that Item 43 would be revoked unless a party submitted to me a brief or memorandum convincing me to rule otherwise. Since no party has submitted further argument on the issue, Item 43 is revoked. (Tr. 470:17-471:17)

### **Items 44 through 50**

The parties agreed to place resolution of Items 44 through 50 in abeyance. I stated that I would not rule on those items unless a party renewed them and requested a ruling. Since Items 44 through 50 have not been renewed, I am not ruling that Respondent is required to produce documents responsive to those items. (Tr. 471:19—472:6; 790:17-24)

### **Item 51<sup>17</sup>**

Item 51 seeks the following documents:

Documents, including, but not limited to, organizational charts, showing the management, administrative, and supervisory composition and hierarchy of Respondent and its entities related to this matter.

I rule that Respondent must provide all documents responsive to Item 51. (Tr. 472:7-16)

### **Item 52**

I have revoked Item 52. (Ruling Revoking Portions of Subpoenas Duces Tecum, dated July 21, 2011)

### **Item 53**

Item 53 seeks the following documents:

Documents, including, but not limited to, policy manuals, bulletins, memoranda, and notices, showing Respondent's rules, regulations, guidelines, policies and/or procedures relating to document retention and/or destruction, and electronic data retention and/or destruction.

I rule that Respondent must provide all documents responsive to Item 53. (Tr. 484:13—485:20; 791:2—794:9)

---

<sup>17</sup> The parties represented on the record that there is no dispute as to the scope of the material requested in Item 51, and Respondent has indicated that it has produced all documents responsive to that item. (Tr. 472:9-16)

**ORDER<sup>18</sup>**

Respondent is ordered to produce within 30 calendar days the documents sought in the Subpoena as limited above.

Issued at \_\_\_\_\_, \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2011.

---

Clifford H. Anderson  
Administrative Law Judge

---

<sup>18</sup> Appeals from administrative law judge rulings on motions, including motions with respect to subpoenas, are governed by the Board's Rule 102.26.