United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, DC 20570

www.nlrb.gov

August 12, 2011

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

I was disappointed to receive the Committee's subpoena, dated August 5, 2011, which seeks, among other things, all documents related to the unfair labor practice complaint filed against Boeing that is currently being litigated in a trial now underway in Seattle before Administrative Law Judge Anderson. As you know, the subpoena far exceeds your earlier requests for documents and our efforts to provide information responsive to those requests are continuing.

The Office of the General Counsel is committed to working with the Committee to meet your information needs, consistent with my responsibility to protect the independence and integrity of the ongoing law enforcement proceedings in this matter. To date, this office has provided the Committee with more than 1500 pages of documents that should provide sufficient information to allow the Committee to assess the legal merit of the Boeing complaint. Among the documents provided to your Committee were a motion filed by Boeing contending that the complaint was legally frivolous, our response to that motion with factual and legal analyses, and Administrative Law Judge Clifford Anderson's ruling agreeing with our position that our decision to issue the complaint was legally sound.

After testifying before the Committee field hearing in South Carolina in June, I also offered to continue to provide documents consistent with your ruling at the hearing that the questioning should not concern information not yet available to Boeing in the ongoing NLRB proceeding. This office has repeatedly pledged to provide information in a manner that protects the rights of the parties to the case. In keeping with our commitment, today we are providing the Committee with more than 4300 pages of additional documents now available to all parties. In addition, I am willing to brief informally you and Ranking Member Cummings in order to continue to accommodate your interest in the facts and legal theory underlying the decision to file a complaint in a general way. I offer this informal briefing as a means of supplementing the multitude of

documents this office has already provided the Committee that address the legal rationale of the complaint. The briefing would also describe the investigative process that led to the issuance of a complaint in this case.

We have discussed with your staff our plan for searching for additional documents, including search terms and custodians, and we are taking the steps necessary to conduct an appropriate search. We are committed to the process of diligently retrieving and reviewing the many thousands of pages of additional documents sought from Agency employees, which is taking considerable time. We appreciate the staff's guidance that we may defer responding to the portion of the subpoena regarding the files of the Administrative Law Judge, which would present particular complexities. We also appreciate your staff's clarification that, at this point in time, the subpoena's focus is solely on documents related to the Boeing case currently being litigated before Administrative Law Judge Anderson. We remain concerned, however, that the subpoena requires the Agency to search voluminous documents, many of which will necessarily include attorney work product, trial strategy, and confidential submissions by the parties or implicate other confidentiality interests. Indeed, given the nature of your search request, the great majority of documents that will be captured by this search will likely contain material that cannot be disclosed consistent with preserving the integrity of the Agency's ongoing law enforcement proceeding and ensuring fundamental fairness to the parties to that proceeding. Therefore, we would appreciate the opportunity to continue discussions with Committee staff about your particular interests in this matter so that we can prioritize our searches and work effectively to accommodate those interests consistent with the need to protect the independence and integrity of the ongoing Agency proceedings. As our efforts proceed, we are prepared to provide documents that can be disclosed consistent with the integrity of the proceedings and the parties' rights to the Committee on a rolling basis beginning this month until our collection and review process is complete.

We continue to be gravely concerned about the adverse effect any premature release of certain documents subject to the subpoena would have on the rights of the parties to this case to have a fair trial. The subpoena covers documents to which the parties are not entitled under the rules governing the pending administrative proceding, including documents that the Administrative Law Judge has expressly ruled cannot appropriately be released to Boeing at this time. These documents include our deliberative work product concerning the investigation, the filing of the complaint, and the preparation for and the conduct of the ongoing trial. Full compliance with the subpoena would unquestionably jeopardize the constitutional due process rights of the parties to the case. *See Pillsbury Company v. Federal Trade Commission*, 354 F.2d 952 (5th Cir. 1966).

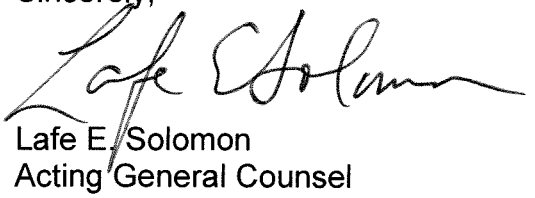
We also continue to believe that the subpoena's demand for confidential documents from our ongoing law enforcement proceeding raises substantial separation of powers concerns because it threatens to seriously impair the Agency's ability to perform its function of executing the law. Moreover, the subpoena threatens to undermine the Agency's independence. Congress delegated the authority to enforce the National Labor Relations Act to the Board and structured it as an independent

agency so that the enforcement of the Act would not be subject to undue political pressure.

As you know, we have articulated our concerns about this matter in greater detail in our prior letters to the Committee, and enclose here for your convenience those dated May 27, 2011 and July 26, 2011.

I request the opportunity to meet with you and Ranking Member Cummings to discuss this matter and provide the informal briefing I suggested above, if you believe that our efforts as described above will not be sufficient to meet the Committee's needs. In the meantime, please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,



Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

Dave Campbell, Esq., Counsel for IAM

William J. Kilberg, Esq., Counsel for The Boeing Company

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

July 26, 2011

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

I write in response to your July 12, 2011 letter concerning the Committee's request for documents related to Case No. 19-CA-032431 ("The Boeing case"). The Office of the General Counsel has previously supplied the Committee with a number of relevant public documents concerning this ongoing enforcement action, now pending before an administrative law judge. In addition, the Acting Deputy General Counsel, Celeste J. Mattina, and I have previously replied to your inquiries about communications between the Office of the General Counsel and the White House, as well as between the Office of the General Counsel and the National Labor Relations Board, about the Boeing case, by indicating that there have been none. We have repeatedly offered to provide the Committee with a substantial amount of additional documentary information, including all hearing transcripts, exhibits, motions, orders, and post-hearing briefs. I continue to believe that this offer is responsive to your request and properly balances the Committee's legitimate informational needs with our legitimate needs to safeguard the due process rights of the parties and maintain the integrity of the ongoing legal proceeding. Therefore, I respectfully ask that you reconsider our request to apply your June 17 ruling at the South Carolina hearing to our production of documents, which would allow the Committee to have access to requested information as soon as it becomes available to the parties and the administrative law judge at the hearing.

On May 12, you sent me an oversight request regarding the Boeing case.[1] The request sought "[a]ll documents and communications referring or relating to the Office of the General Counsel's investigation of Boeing, including but not limited to all communications between the Office of the General Counsel and the National Labor Relations Board," and communications between the Agency and Boeing and the Machinists.[2] Acting Deputy General Counsel Celeste J. Mattina replied to this oversight

[1] Letter from Reps. Darrell Issa, Dennis Ross, and Trey Gowdy to Lafe E. Solomon, Acting General Counsel, National Labor Relations Board (May 12, 2011).
[2] *Id.*

request on May 27.[3] The response expressed our concern that the disclosure of documents and information not available to both Boeing and the Machinists could result in an unfair advantage to one party over another and risk harm to the integrity of the Agency's legal process. The response also provided the Committee with documents that contained the facts and legal theories of our case, and informed the Committee that there are no documents constituting or recording communications between the Office of the General Counsel and the National Labor Relations Board related to the Boeing matter. Finally, the response offered to provide the Committee with copies of the transcripts and exhibits from the hearing contemporaneous with their availability, as well as copies of all post-hearing briefs filed.

On May 26, you sent me a letter requesting my testimony at a Committee hearing on Friday, June 17, in North Charleston, South Carolina.[4] The letter stated the purpose of the hearing was to explore the NLRB's decision to file a complaint against Boeing for alleged violations of federal labor law. On June 3, I respectfully declined your invitation, advising that my appearance at the Committee hearing could threaten the rights of Boeing and the Machinists to a fair trial before the administrative law judge.[5] On June 7, you requested that I reconsider your invitation to testify at the Committee hearing in South Carolina.[6] You acknowledged the due process rights of the parties to the Boeing case, but expressed your view that my testimony before the Committee did not jeopardize those rights because the hearing did not "concern [my] decision-making strategy or [my] legal strategy." I responded on June 10, reiterating the concerns I had previously expressed, and offering to have Associate General Counsel Richard Siegel, who was not involved in the determination of the merits of this case, testify in the hearing, in a further attempt to meet the needs of the Committee without adversely impacting the rights of the litigating parties or unduly interfering with an enforcement action. On June 14, you rejected all of my offers and insisted upon my presence at the hearing.[7]

On June 17, I reluctantly appeared, under threat of subpoena, to testify at the Committee hearing in South Carolina. After discussion among Committee members, and prior to the acceptance of any testimony, you ruled that "[a]ny item which is not discoverable by the defendant, will be considered out of bounds for any question."[8] In

---

[3] Letter from Celeste J. Mattina, Acting Deputy General Counsel, National Labor Relations Board, to Reps. Darrell Issa, Dennis Ross, and Trey Gowdy (May 27, 2011).
[4] Letter from Rep. Darrell Issa to Lafe E. Solomon, Acting General Counsel, National Labor Relations Board (May 26, 2011).
[5] Letter from Lafe E. Solomon, Acting General Counsel, National Labor Relations Board, to Rep. Darrell Issa (June 3, 2011).
[6] Letter from Rep. Darrell Issa to Lafe E. Solomon, Acting General Counsel, National Labor Relations Board (June 7, 2011).
[7] Letter from Rep. Darrell Issa to Lafe E. Solomon, Acting General Counsel, National Labor Relations Board (June 14, 2011).
[8] *Field Hearing on Unionization and Regulation Issues as It Relates to the National Labor Relations Board's Complaint against Boeing; Hearing before the House Oversight and Government Reform Committee,* 112th Cong. (2011) (excerpts from unofficial transcript) (although the Agency has requested the official transcript from the Committee, it is not yet available).

other words, you concluded that it would be inappropriate for Committee members to ask me to provide information not yet available to Boeing. As a result of the ruling, the hearing continued with a reduced risk of harm to the due process rights of the litigants.

On June 29, I sent additional documents for the Committee's review, accompanied by a cover letter wherein I expressed my view that your ruling at the June 17 Committee hearing "strikes an appropriate and fair balance between the Committee's legitimate informational needs and the Agency's legitimate need to secure the due process rights of the parties to a fair trial" and stated that "extending the application of your ruling to the document request would continue to ensure fairness to the litigants."[9] Responding on July 12, you rejected my view that your approach at the South Carolina hearing, which limits production of information to that which is discoverable by Boeing in order to protect the due process rights of the litigants to the case, was the fairest way to proceed.[10]

It remains my belief that premature disclosure of the Boeing case file would severely impact the parties' due process rights and the Agency's legal processes. You have asserted that these concerns are overcome by the Committee's need to assess the claims made by Boeing that the complaint issued against it is "legally frivolous."[11] Indeed, Boeing, in its Motion to Dismiss, contended to Administrative Law Judge Clifford Anderson that the complaint was legally frivolous. Administrative Law Judge Anderson has denied that Motion, thus supporting my position that the Boeing complaint has legal merit.[12] This ruling has come at an early stage of the ongoing legal proceeding. Clearly, Boeing has a right to continue to challenge our facts and legal theories throughout the legal process and will be afforded the due process protections prescribed by Congress at every step of the proceeding. The documents related to Judge Anderson's decision have been previously provided to the Committee. The documents are noteworthy because they clearly demonstrate the correctness of your June 17 ruling. They demonstrate that the Agency can satisfy the Committee's need for information by continuing to provide documents consistent with that ruling.

The Agency's interests are both clear and critical: to safeguard the rights of the parties to the case and maintain the integrity of the Agency's legal process. We were therefore in agreement when you ruled at the hearing in South Carolina that it would be inappropriate for Committee members to ask me to provide information not yet available to Boeing.

With all due respect, we urge you to continue to apply the above ruling as it relates to documents involving the Boeing case. We frankly find no rationale for distinguishing information provided to the Committee in the form of testimony from

---

[9] Letter from Lafe E. Solomon, Acting General Counsel, National Labor Relations Board, to Rep. Darrell Issa (June 29, 2011).
[10] Letter from Rep. Darrell Issa to Lafe E. Solomon, Acting General Counsel, National Labor Relations Board (July 12, 2011).
[11] *Id.*
[12] *See* Resp.'s Mot. To Dismiss and Strike Injunctive Relief, AGC's Opposition to Resp.'s Motion to Dismiss and Strike, ALJ Ruling on Resp. to Motion to Dismiss.

information provided to the Committee in the form of documents. Rather, the framework that you established at the hearing remains necessary as long as this legal proceeding remains active while the Committee is conducting oversight.

Your July 12 letter seeks the following three broad categories of "documents and information" attendant to the Boeing case: intra-Agency and external documents and communications related to the underlying investigation; communication logs and messages pertaining to dealings between Agency personnel and the Machinists; and communication logs and messages pertaining to dealings between Agency personnel and Boeing. These three broad categories duplicate, in large part, the information sought by Boeing in its Subpoena Duces Tecum B-647901, served upon Counsel for the Acting General Counsel in the ongoing proceeding. Specifically, Boeing's information requests 1, 2, 5 through 17, and 23 (set forth on pages 5 through 9 of its subpoena), which were attached as Exhibit A to our petition to revoke the subpoena and provided to the Committee on June 29, 2011, explicitly encompass those documents sought by the Committee.

Notably, Administrative Law Judge Anderson denied the requests made by Boeing for substantially the same information you are also seeking. He properly determined that it is not appropriate for Boeing to have the documents that it seeks at this point in the process since it is tantamount to pre-trial discovery, which is not afforded to litigants in NLRB proceedings. He cited two cases (*Red Way Carriers,* 274 NLRB 1359, 1371 (1985), and *Ross M. Madden v. HOD Carriers Local 41,* 277 F.2d 688 (7th Cir. 1960), cert. denied, 364 U.S. 863 (1961)) in his ruling regarding the appropriateness of protecting Agency documents, and was clear that precedent dictates that the proper way to test the quality of the investigation is through the trial process. Indeed, he agreed that it is inappropriate for such information to be prematurely disclosed, rather than as evidence is made available by the parties through the litigation process. The only exception to his ruling related to information dealing with expert witnesses, which is not part of the investigatory file, wherein he ordered that the parties exchange that information should it exist.

Administrative Law Judge Anderson's ruling demonstrates why the disclosure of information to the Committee prior to the time when it is appropriate for the parties to have it, and for him to consider it, risks harm to the right of the parties to a fair trial. Consistent with this, I reiterate my offer to provide you with all record evidence, including Administrative Law Judge Anderson's rulings, as it becomes available. Further, as you know, under the rules of the House of Representatives, any document that we produced to the Committee is a "committee record."[13] As such, each Member of the House of Representatives has a right to access those documents. For all practical purposes, documents that Administrative Law Judge Anderson has ruled should not be available to the parties at this time would therefore be exposed to all 435 Members of the House of Representatives should we prematurely produce them pursuant to your request. No assurances have been given that all Members with access to these documents will keep them confidential, consistent with Administrative Law Judge

[13] Rules of the House of Representatives, Rule XI, clause 2, § 794(e)(2)(A).

Anderson's ruling. Any disclosure of this information would undermine the due process rights of the litigants, the administrative law judge's ability to effectively preside over the case, and the integrity of the hearing now under way.

For the reasons outlined above, I respectfully request that you reconsider your decision not to apply your June 17 ruling to our ongoing production of documents to the Committee. To be clear, allowing us to produce documents to the Committee consistent with your June 17 ruling does not mean that the Committee will not have access to the documents it seeks. Rather, it means that the Committee will have access to the requested information contemporaneously with its availability to the parties in the pending litigation. On the other hand, the issuance of a subpoena in an attempt to obtain the requested documents of an open and ongoing enforcement proceeding would severely undermine the integrity of the ongoing legal proceeding and cause serious damage to the due process rights of the parties to that proceeding.

If you have other specific questions about the case, we would be happy to work with you to accommodate your legitimate needs without compromising our mutual interest in preserving the rights of the parties. Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700, if you wish to discuss this matter further.

Sincerely,

Lafe E. Solomon
Acting General Counsel

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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

May 27, 2011

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Dennis Ross, Chairman
Subcommittee on Federal Workforce, U.S.
Postal Service and Labor Policy
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Trey Gowdy, Chairman
Subcommittee on Health Care, District of Columbia,
Census and the National Archives
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa, Chairman Ross, and Chairman Gowdy:

I write in response to your May 12, 2011 letter to Acting General Counsel Lafe E. Solomon regarding the complaint issued on April 20, 2011, against the Boeing Company ("Boeing") and lawsuits authorized by the National Labor Relations Board ("NLRB" or "Board") against the states of Arizona and South Dakota. I will address each issue in turn.

Boeing

As you know, Case 19-CA-32431 is an open enforcement action in which the NLRB has alleged that Boeing violated Section 8(a)(1) and (3) of the National Labor Relations Act ("NLRA"). This case is currently scheduled to be heard before an administrative law judge on June 14, 2011, less than three weeks from now. During that hearing, Boeing will have ample opportunity to review and challenge the evidence and legal theories

proffered by counsel for the Acting General Counsel, and to present evidence and legal arguments in its defense. Throughout this proceeding, both Boeing and the International Association of Machinists and Aerospace Workers ("Machinists") will be afforded due process protections and a right to a fair trial. We appreciate the Committee's need for information in the performance of its oversight responsibilities. At the same time, the Agency has an obligation to protect the integrity of its processes and the rights of parties who appear before it.

Your letter broadly seeks confidential and privileged information, internal deliberative materials, attorney work product, and settlement communications in this open enforcement action.

Under the NLRA, the Agency has no power to initiate investigations about potential violations of the Act; it acts only upon the filing of a charge by an interested person. Because it is dependent on individuals to provide necessary information, it has longstanding investigative and litigation procedures, approved by the courts, to encourage those who have relevant information to come forward without fear of exposure or threat of retaliation. When investigating unfair labor practice charges, the Agency elicits testimonial evidence under a promise of confidentiality and bars pre-trial discovery in its administrative hearings. Thus, in open cases, statements of witnesses obtained during the investigation are not disclosed unless the witness is called to testify at trial and, even then, are provided, only upon request, and only after the witness has testified on direct examination. Moreover, the investigative/litigation file contains material prepared by those working on the case, such as file notes revealing research, analysis, potential and actual recommendations and internal memoranda that form the basis for the Agency's decisions. All of these documents are not only protected by the deliberative process, but, along with drafts of pleadings and other litigation documents, are protected as attorney work product. In addition, the file contains the legal citations, analysis, and positions of the parties to this case, and other evidence provided by those parties. The Agency does not disclose documents containing attorney work product or evidence submitted by one party to any other party in the case during the course of the investigation. Premature disclosure of such material could seriously compromise the litigation and give one litigant an unfair advantage over another. Finally, in every unfair labor practice case deemed by the Acting General Counsel to warrant issuance of an administrative complaint, the Agency pursues settlement efforts before trial, which are memorialized in the file. The protection normally accorded such material is designed to encourage full exploration of the possibility of settlement without fear that disclosure of positions taken during settlement discussions will unduly prejudice a party at trial.

As the foregoing discussion demonstrates, most of the Agency's documents regarding the Boeing investigation are privileged material, the premature disclosure of which risks prejudice to the rights of litigants and witnesses involved in this matter. This Agency takes seriously its judicially mandated obligation to protect the due process rights of its litigants. *See, e.g., ATX, Inc., v. U.S. Department of Transportation*, 41 F.3d 1522 (D.C. Cir. 1994) (in declining to set aside an administrative decision of the Department of Transportation, the court emphasized that the agency took appropriate steps to insulate

itself from Congressional intervention). The basic facts and legal theories of the Acting General Counsel's case are contained in a number of public documents: the complaint, the related press releases and a fact sheet, which are indexed and included in the enclosed thumb drive and are otherwise available on the NLRB's public website at http://www.nlrb.gov/node/443. We are also providing you with two other public documents, the charge and the answer to the complaint filed in this case.

In addition, we would be happy to provide the Committee with copies of the transcript and exhibits from the hearing contemporaneous with their availability, as well as copies of the post-hearing briefs to be filed by all parties. The transcript will provide a detailed accounting of the exact nature of the case and the facts proffered in support and rebuttal, which frame the bases for all legal arguments. The briefs will clearly detail the precise precedent invoked and relied upon.

With respect to your request for communications between the Office of the General Counsel and the National Labor Relations Board referring or relating to the Office of the General Counsel's investigation of Boeing, there are no responsive documents.

Lawsuits Against Arizona and South Dakota

You have expressed an interest in "the Office of [the] General Counsel's investigations of union election laws in Arizona, South Carolina, South Dakota and Utah." By way of explaining your interest in this regard, your letter states:

> [W]e note that you have directed the NLRB to file lawsuits against the states of Arizona and South Dakota. We understand that the NLRB seeks to invalidate constitutional amendments passed by these states protecting workers' rights to secret ballot elections. The NLRB is apparently seeking to administratively impose card check, now that efforts to pass card-check legislation have failed to gain support in Congress.

At the outset, I welcome this opportunity to respond to the misapprehension that, in bringing this litigation on behalf of the Board, the Agency is attempting to impose policies on these States with respect to a card check process that Congress has declined to enact. In fact, the opposite is the case. Since its enactment in 1935, the NLRA has afforded employees the right to designate a collective bargaining representative either through employer voluntary recognition using card check or through a secret ballot election. The Supreme Court has long recognized the availability of both options under the NLRA. See *Linden Lumber Div., Summer & Co. v. NLRB*, 419 U.S. 301, 309-310 (1974); *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 596-599 (1969).

There are proposals presently before Congress that would amend the NLRA to eliminate the card check option, but those proposals have thus far failed to be enacted.

Thus, the litigation that is the subject of your inquiry is based on protecting existing federal law—the law that the Acting General Counsel is sworn to uphold. That well-established federal law, as previously noted, guarantees to all private sector employees, within the jurisdiction of the NLRB, a voluntary recognition option, often based on a card check, in addition to a secret ballot election option.

The appropriateness and legitimacy of this preemption litigation has been acknowledged by leading labor lawyers, who have expressed support for the Board's decision to prevent encroachment by individual states' constitutional amendments on the legitimacy of Congress' longstanding choice to provide employees, unions and employers alternative paths to employee representation guaranteed by the NLRA. For example, former NLRB General Counsel Arthur Rosenfeld, appointed by President George W. Bush, stated "Board law, of course, acknowledges other means such as voluntary recognition, card check, voice votes . . . " and "I have to applaud the Board's quick authorization, the quick action in authorizing the acting general counsel in order to protect the Board's jurisdiction." See Emerging Trends at the National Labor Relations Board, Hearing before the Subcommittee on Health, Employment, Labor and Pensions, Feb. 11, 2011 (112th Cong.) at p. 15 (http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg64230/pdf/CHRG-112hhrg64230.pdf). In addition, former Board Member Marshall Babson, appointed by President Reagan, is reported to have stated, "the [B]oard is duty-bound to sue the states . . . to preserve and protect its jurisdiction." See States To Play Hardball In NLRB Secret Ballot Fight - Law360, by Ben James, 2/3/2011 © 2003-2010, Portfolio Media, Inc.(http://www.law360.com/print_article/221147?section=employment).

As to our "investigation" into this matter, I will start by explaining that the Office of the General Counsel's Special Litigation Branch serves as legal counsel to the Board and General Counsel. It gives advice on miscellaneous matters and represents the Board and the General Counsel in court when they become a party or amicus in cases other than those arising directly from the enforcement of Board Decisions and Orders. By way of example, attorneys from this Branch provided the Board and General Counsel with legal advice about and represented the Board in a number of litigated preemption cases, including *NLRB v. State of North Dakota,* 504 F. Supp. 2d 750,753-754 (D.N.D. 2007)(relating to preemption of North Dakota law); *NLRB v.* State *of Ill. Dept. of Employment Sec.*, 988 F.2d 735 (7th Cir. 1993)(preemption of enforcement of Illinois law); as *amicus* in the U.S. Court of Appeals for the Ninth Circuit and joining the Solicitor General's Supreme Court brief in *Chamber of Commerce v. Brown,* 554 U.S. 60 (2008) (preemption of California statute); and as amicus in *Metro. Milwaukee* Ass'n *of Commerce v. Milwaukee County,* 431 F.3d 277 (7th Cir. 2005) (preemption of county ordinance).

The AFL-CIO, by letter dated November 15, 2010 to the Acting General Counsel, asked the NLRB to consider whether the states' constitutional amendments are preempted by the NLRA. The AFL-CIO opined that the amendments are preempted and that the Board should commence a lawsuit to invalidate them pursuant to *NLRB v. Nash-Finch Co.*, 404 U.S. 138 (1971). No factual investigation was conducted; rather the amendments were considered based upon their plain language, which was approved and made effective by the states.

As the Acting General Counsel explained in his March 22 letter to seven U.S. Senators who had inquired into this same matter: whether the Board takes any action with respect to state law arguably in conflict with federal law turns on a number of variables, including whether the matter is purely an issue of law that can be resolved by a court on pleadings presenting legal argument, whether an outside party requests the Board to present its views to a court, and staff resources. In response to the AFL-CIO inquiry, the Acting General Counsel requested that the Special Litigation Branch prepare an analysis of the preemption issues and make a recommendation. In due course, a legal memorandum was prepared and was submitted to the four members of the Board with the Acting General Counsel's recommendation. Concluding that the States' constitutional amendments were preempted by operation of the NLRA and the Supremacy Clause of the United States Constitution (U.S. Const. art. VI, cl. 2), a majority of the Board then authorized institution of a lawsuit against the states pursuant to *NLRB v. Nash-Finch Co., supra*, if an amicable resolution could not be reached.

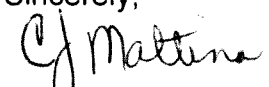
The NLRB and its General Counsels have consistently acted in this way upon receiving other similar requests from outside parties. For example, in response to a request from employer groups, the NLRB joined litigation to invalidate California law that would frustrate employer speech in response to union activity (*Chamber of Commerce v. Brown, supra).* More recently, in response to a recent request from the National Right to Work Legal Defense Foundation, the Acting General Counsel wrote to the Attorney General of the State of California questioning the legitimacy of California's "professional strikebreaker" law (Cal. Labor Code §§ 1130-1136.2), which prohibits and punishes employers who employ certain strikebreakers.

Consistent with the Agency's historic practice in preemption cases and on the basis of the Board's authorization, the Acting General Counsel, by letters dated January 13, 2011, advised the Attorneys General of Arizona, South Carolina, South Dakota, and Utah that their respective, recently-approved state constitutional amendments were preempted by the NLRA and the Supremacy Clause of the U.S. Constitution. On January 27, 2011, in a joint letter from the States of Arizona, South Carolina, South Dakota, and Utah to the Acting General Counsel of the National Labor Relations Board, the States' Attorneys General acknowledged that current federal law only "guarantees an election with secret ballots *if* the voluntary recognition option is not chosen." (emphasis added). In that same letter, the Attorneys General asserted that their constitutional amendments do not "require elections when federal law does not," but instead "support the current federal law . . . ."

On February 2, 2001, the Acting General Counsel sent a letter to the States' Attorneys General seeking to resolve the matter without the necessity of costly litigation; however, those attempts failed. On April 22, 2011, the Acting General Counsel notified the Attorneys General that the Board would initiate lawsuits in Arizona and South Dakota. The litigation that was initiated against the State of Arizona on May 6, 2011 by the Acting General Counsel at the direction of the Board is designed to ensure that both options afforded by federal law remain available in all 50 states, including in those states which have enacted measures that, fairly construed, would make secret ballot elections the only means of designating a collective bargaining representative. The Board's federal district court complaint expresses the Board's disagreement both with the Arizona Attorney General's claim that the Arizona Amendment is consistent with federal law, and with Arizona's assumption that states may establish their own procedures for enforcing the federal law that Congress assigned to the Board to administer. See NLRB Complaint filed in National Labor Relations Board v. State of Arizona (D.AZ. 11-cv-00913) at Para XIII, XV). I am providing the aforementioned January 13, 2011 letters from the Acting General Counsel to the four States' Attorneys General, the January 27, 2011 joint response from the Attorneys General, the February 2, 2011 and April 22, 2011 letters from the Acting General Counsel to the Attorneys General, the May 6, 2011 complaint issued against the State of Arizona, the November 15, 2010 letter from the AFL-CIO, the March 22, 2011 response from the Acting General Counsel to seven U.S. Senators, and a fact sheet, which are all indexed and included in the enclosed thumb drive. Many of these documents referring or relating to the litigation regarding the state amendments are publicly available and may also be accessed by going to the Agency's website at https://mynlrb.nlrb.gov, and clicking on "Litigation regarding state amendments" under the heading "Fact Sheets".

I trust this information is responsive to your inquiry. If you have any further questions or need further assistance, please feel free to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-1700. We will be happy to meet with you to discuss how we might accommodate any further information requests you may have, consistent with our need to protect the integrity of our legal processes.

Sincerely,



Celeste J. Mattina
Acting Deputy General Counsel

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

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

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

202-273-3700

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U S C 3512

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
19-CA-32431	3/26/10

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
The Boeing Company

b. Tel. No. 206-662-9091

c. Cell No.

f. Fax No. 206-662-9001

d. Address *(Street, city, state, and ZIP code)*
P. O. Box 3707
Seattle, WA 98124

e. Employer Representative
Doug Kight

g. e-Mail

h. Number of workers employed
25,000

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
production facility

j. Identify principal product or service
commercial airplanes

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* 8(a)(3) and 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

Within the last six months, The Boeing Company has:
(1) violated Section 8(a)(1) of the Act by threatening bargaining unit members represented by IAMAW District Lodge 751 because of their protected activity;
(2) violated Section 8(a)(5) of the Act by failing to bargain in good faith with District Lodge 751; and
(3) violated Section 8(a)(3) by beginning the process of transferring work from plants employing District Lodge 751 members to a new plant employing non-union workers in retaliation for bargaining unit workers' protected concerted activity.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
International Association of Machinists and Aerospace Workers District Lodge 751

4a. Address *(Street and number, city, state, and ZIP code)*
c/o Schwerin Campbell Barnard Iglitzin & Lavitt LLP
18 West Mercer Street, Ste. 400
Seattle, WA 98119-3971

4b. Tel. No. 206-285-2828

4c. Cell No.

4d. Fax No. 206-378-4132

4e. e-Mail
barnard@workerlaw.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)* International Association of Machinists and Aerospace Workers

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Kathleen Phair Barnard
(signature of representative or person making charge)

Kathleen Phair Barnard, Attorney
(Print/type name and title or office, if any)

Address 18 W. Mercer St. Ste. 400, Seattle WA 98119

3/26/10
(date)

Tel. No. 206-285-2828

Office, if any, Cell No.

Fax No. 206-378-4132

e-Mail
barnard@workerlaw.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ORIGINAL

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(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 McNerney	—	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*

(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.

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

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

FORM NLRB-4668
(4-05)

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)

Form NLRB-4338 (6/90)
(R19 – 3/94)

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.

Certified Mail: 7006 3450 0001 6746 5471

THE BOEING COMPANY
Attn: Douglas P. Kight, Attorney
PO Box 3707, MS 13-08
Seattle, WA 98124-2207

Regular Mail:

WILLIAM J. KILBERG, ATTORNEY
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave, NW
Washington, DC 20036-5306
Email: wkilberg@givsondunn.com

DREW E. LUNT, ATTORNEY
MCKENNA LONG & ALDRIDGE LLP
303 Peachtree St NE, Suite 5300
Atlanta, GA 30308-3265
Email: dlunt@mckennalong.com

RICHARD B. HANKINS, ATTORNEY
MCKENNA LONG & ALDRIDGE LLP
303 Peachtree St NE, Suite 5300
Atlanta, GA 30308-3265
Email: rhankins@mckennalong.com

Regular Mail:

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS DISTRICT
LODGE 751
Attn: Jesse Cote, Business Agent
9135 15th Pl S
Seattle, WA 98108-5100

DAVID CAMPBELL, ATTORNEY
SCHWERIN CAMPBELL BARNARD IGLITZIN &
LAVITT LLP
18 W Mercer St, Suite 400
Seattle, WA 98119-3971
Email: Campbell@workerlaw.com

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

THE BOEING COMPANY and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS DISTRICT LODGE 751, affiliated with INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS	Case 19-CA-32431

ANSWER

Respondent The Boeing Company ("Boeing"), by their undersigned attorneys, for their Answer to the Complaint and Notice of Hearing ("Complaint") filed by the Acting General Counsel of the National Labor Relations Board ("NLRB"), states as follows:

GENERAL DENIAL

Except as otherwise expressly stated herein, Boeing denies each and every allegation contained in the Complaint, including, without limitation, any allegations contained in the preamble, headings, or subheadings of the Complaint, and Boeing specifically denies that it violated the National Labor Relations Act ("NLRA") in any of the manners alleged in the Complaint or in any other manner. Pursuant to Section 102.20 of the Board's rules, averments in the Complaint to which no responsive pleading is required shall be deemed as denied. Boeing expressly reserves the right to seek to amend and/or supplement its Answer as may be necessary.

of Machinists and Aerospace workers (the "IAM") waived any rights it had with respect to such actions by virtue of the language of Section 21.7 of the collective bargaining agreement between Boeing and the IAM.

5. Boeing has not violated Section 8(a)(3) of the NLRA as it has not discriminated in the hire, wages, tenure, or terms or conditions of employment of any Unit member.

6. Boeing's alleged conduct was not inherently destructive of employees' rights under the NLRA because, *inter alia*, in its collective bargaining agreement with Boeing, the IAM expressly agreed that Boeing has the right to place work in any location of its choice without the need to bargain with the IAM, and because an intent to mitigate the adverse economic impact of an anticipated future strike is not inherently destructive of protected employee rights under the NLRA.

7. Boeing has not violated Section 8(a)(1) of the NLRA as it has not interfered with, restrained, or coerced employees represented by the IAM in the exercise of their rights protected by the NLRA.

8. The remedy requested in the Complaint is impermissibly punitive and would cause an undue hardship on Boeing, its employees, and the State of South Carolina. Moreover, none of the complained of actions caused any hardship on any Boeing employees or the State of Washington.

9. The remedy requested in Paragraph 13(a) of the Complaint is impermissibly retroactive because its legal basis represents a radical and not reasonably anticipated departure from current Board and court precedent.

10. The remedy requested in Paragraph 12 of the Complaint is improper because Boeing has not violated Section 8(a)(1) of the NLRA.

(b) Boeing denies the allegations of Paragraph 2(b), except to admit that in the last twelve months its business operations resulted in gross revenues in excess of $500,000.

(c) Boeing denies the allegations of Paragraph 2(c), except to admit that during the last twelve months it received, shipped, sold and/or purchase goods at its facilities in the State of Washington valued in excess of $50,000 from places outside of the State of Washington.

(d) Boeing denies the allegations of Paragraph 2(d), except to admit that it is and has been an employer engaged in commerce.

3. Boeing admits the allegations of Paragraph 3.

4. The first sentence of Paragraph 4 states legal conclusions for which no answer is required. As to the remaining allegations in Paragraph 4, Boeing admits that the identified individuals are or were either agents or supervisors, and that they held the following positions in October 2009:

- James ("Jim") F. Albaugh: Executive Vice President, The Boeing Company; Chief Executive Officer, Boeing Commercial Airplanes
- Scott Carson: Executive Vice President, The Boeing Company; Chief Executive Officer, Boeing Commercial Airplanes (until August 2009)
- Raymond L. Conner: Vice President and General Manager of Supply Chain Management and Operations, Boeing Commercial Airplanes
- Scott Fancher: Vice President and General Manager, Boeing 787 Dreamliner Program, Boeing Commercial Airplanes
- Frederick C. Kiga: Vice President, State and Local Government Relations and Global Corporate Citizenship for the Northwest Region, Boeing Commercial Airplanes

(a) Boeing denies the allegations of Paragraph 6(a), except to admit that its President, Chairman and CEO James McNerney, participated in an earnings conference call on October 21, 2009; and Boeing specifically denies that Mr. McNerney made an "extended statement" or any statement about moving 787 Dreamliner work to South Carolina due to "strikes happening every three or four years in Puget Sound." Boeing admits that the referenced newspaper articles appeared in *The Seattle Post-Intelligencer* and *The Seattle Times.*

(b) Boeing denies the allegations of Paragraph 6(b), and further states that the referenced October 28, 2009 memorandum speaks for itself.

(c) Boeing denies the allegations of Paragraph 6(c), except to admit that the referenced newspaper article appeared in *The Seattle Times* on December 7, 2009.

(d) Boeing denies the allegations of Paragraph 6(d), except to admit that the referenced newspaper article appeared in *The Puget Sound Business Journal* on December 8, 2009.

(e) Boeing denies the allegations of Paragraph 6(e), except to admit that a Seattle Times reporter conducted a video-taped interview of Mr. Albaugh and that the tape speaks for itself.

7. (a) Boeing denies the allegations of Paragraph 7(a), and specifically denies that it transferred the "second 787 Dreamliner" assembly line from its facility in Everett, Washington to a facility to be constructed in North Charleston, South Carolina, and except to state that on October 28, 2009, Boeing announced that it would place a new second assembly line for the 787 Dreamliner in North Charleston, South Carolina.

(b) Boeing denies the allegations of Paragraph 7(b).

(c) Boeing denies the allegations of Paragraph 7(c).

Boeing reserves the right to raise any additional defenses not asserted herein of which they may become aware through investigation, as may be appropriate at a later time.

Respectfully Submitted,

Dated: May 4, 2011

William J. Kilberg P.C.
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue N.W.
Washington, District of Columbia 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539

Richard B. Hankins
MCKENNA LONG & ALDRIDGE
303 Peachtree Street, N.E.
Atlanta, Gerorgia 30308
Telephone: 404.527-4000
Facsimile: 404.527-4198

Attorneys for The Boeing Company

David Campbell
Carson Glickman-Flora
SCHWERIN CAMPBELL BARNARD IGLITZIN & LAVITT LLP
18 West Mercer Street, Suite 400
Seattle, Washington 98119
Campbell@workerlaw.com
Flora@workerlaw.com

Counsel for IAM

DATED this 4th day of May, 2011

Daniel J. Davis
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, NW
Washington, D.C. 20036-5303
DDavis@Gibsondunn.com

Boeing Complaint Fact Sheet

On April 20, 2011, the Acting General Counsel of the National Labor Relations Board issued a complaint against the Boeing Company alleging that it violated federal labor law by deciding to transfer a second airplane production line from a union facility in the state of Washington to a non-union facility in South Carolina for discriminatory reasons. A hearing has been set for June 14, 2011 in Seattle before an administrative law judge.

Click here to see a news release about the complaint, and here to see a copy of the full complaint.

Click here to view Boeing's response to the complaint.

The Charge and Complaint

On March 26, 2010, the International Association of Machinists and Aerospace Workers, District Lodge 751, filed a charge with the NLRB alleging that the Boeing Company had engaged in multiple unfair labor practices related to its decision to place a second production line for the 787 Dreamliner airplane in a non-union facility.

Specifically, the union charged that the decision to transfer the line was made to retaliate against union employees for participating in past strikes and to chill future strike activity, which is protected under the National Labor Relations Act.

The union also charged that the company violated the National Labor Relations Act by failing to negotiate over the decision to transfer the production line. The Machinists' union has represented Boeing Company employees in the Puget Sound area of Washington, where the planes are assembled, since 1936, and in Portland, Oregon, where some airplane parts are made, since 1975.

Throughout the investigation of the charge, NLRB officials met with both parties in efforts to facilitate a settlement agreement. The overwhelming majority of NLRB charges found to have merit are settled by agreement. Although no settlement was reached and the Agency was compelled to pursue litigation, the Acting General Counsel remains open to a resolution between the parties.

The complaint issued by the Acting General Counsel (19-CA-32431) alleges that Boeing violated two sections of the National Labor Relations Act by making coercive statements and threats to employees for engaging in statutorily protected activities, and by deciding to place the second line at a non-union facility, and establish a parts supply program nearby, in retaliation for past strike activity and to chill future strike activity by its union employees.

The investigation found that Boeing officials communicated the unlawful motivation in multiple statements to employees and the media. For example, a senior Boeing official said in a videotaped interview with the Seattle Times newspaper: "The overriding factor (in transferring the line) was not the business climate. And it was not the wages we're paying today. It was that we cannot afford to have a work stoppage, you know, every three years."

The complaint also alleges that Boeing's actions were "inherently destructive of the rights guaranteed employees by Section 7 of the Act."

The investigation did not find merit to the union's charge that Boeing failed to bargain in good faith over its decision regarding the second line. Although a decision to locate unit work would typically be a mandatory subject of bargaining, in this case, the union had waived its right to bargain on the issue in its collective bargaining agreement with Boeing.

The Law and Supporting Cases

The NLRB enforces the National Labor Relations Act, which guarantees employees the right to organize and collectively bargain, or to refrain from doing so. Applicable Sections of the Act follow:

RIGHTS OF EMPLOYEES

Section 7: Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities...

RIGHT TO STRIKE

Section 13: Nothing in this Act ... shall be construed so as either to interfere with or impede or diminish in any way the right to strike or to affect the limitations or qualifications on that right.

UNFAIR LABOR PRACTICES (relevant sections)

Section 8(a)It shall be an unfair labor practice for an employer—
(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization

Cases:

On the 8(a)(1) charge:

The U.S. Supreme Court delineated the line between protected employer speech versus unlawful employer speech under the NLRA in NLRB v. Gissel Packing Corp., 395 US 575, 618 (1969).

In General Electric Company, 215 NLRB 520 (1974), the National Labor Relations Board applied the Gissel test to set aside an election because the employer, citing concerns about possible future strikes, stated that the plant's nonunion status was a primary factor in choosing to locate a production line for a new motor there. In its decision, the Board distinguished an employer's right to take defensive action when threatened with an imminent strike from threats to transfer work "merely because of the possibility of a strike at some speculative future date."

Since then, the Board has repeatedly held that an employer violates section 8(a)(1) by threatening that employees will lose their jobs if they join a strike, or by predicting a loss of business and jobs because of unionization or strike disruptions without any factual basis. In contrast, the Board has found that employers may lawfully relate concerns raised by customers (Curwood, Inc., 339 NLRB 1137 (2003). They may also reference the *possibility* that unionization, including strikes, might harm relationships with consumers, as opposed to predicting "unavoidable consequences."Miller Industries Towing Equipment, Inc., 342 NLRB 1074, 1075-76 (2004)

On the 8(a)(3) charge:

An employer's discouragement of its employees' participation in a legitimate strike constitutes discouragement of union membership within the meaning of this section. This applies to employer conduct designed to retaliate against employees for having engaged in a strike in the past (Capehorn Industry, 336 NLRB 364 (2001)where the employer failed to reinstate strikers when there was no legitimate business justification for permanently subcontracting the work), as well as employer conduct designed to forestall employees from exercising their right to strike in the future (Century Air Freight, 284 NLRB 730 (1987) where employer permanently subcontracted unit work and discharged employees in order to forestall the exercise of their right to strike; and Westpac Electric, 321 NLRB 1322 (1996), where employer isolated employee in retaliation for previous and anticipated future strike activities). In National Fabricators 295 NLRB 1095 (1989), where potential strikers were targeted for layoffs, the Board held that "disfavoring employees who were likely to strike, is the kind of coercive discrimination that...discourages...protected activity."

Next Steps

It is important to note that the complaint states allegations by the Acting General Counsel that the employer has committed unfair labor practices. The Board has made no findings on these allegations. The next step in the process will be a hearing before an NLRB administrative law judge, scheduled for June 14 at the NLRB's Seattle office. At the hearing, both parties will have an opportunity to present evidence and argue in favor of their position. The decision of the judge may be appealed to the Board in Washington by the filing of exceptions by either party. The Board's decision could further be appealed to a federal court of appeals and then to the U. S. Supreme Court. Click here for a flow chart of the NLRB process.

This fact sheet was posted on 4/20/2011 and will be updated periodically.

Printer-friendly version

National Labor Relations Board issues complaint against Boeing Company for unlawfully transferring work to a non-union facility

April 20, 2011

Contact:
Office of Public Affairs
202-273-1991
publicinfo@nlrb.gov
www.nlrb.gov

NLRB Acting General Counsel Lafe Solomon today issued a complaint against the Boeing Company alleging that it violated federal labor law by deciding to transfer a second production line to a non-union facility in South Carolina for discriminatory reasons.

Boeing announced in 2007 that it planned to assemble seven 787 Dreamliner airplanes per month in the Puget Sound area of Washington state, where its employees have long been represented by the International Association of Machinists and Aerospace Workers. The company later said that it would create a second production line to assemble an additional three planes a month to address a growing backlog of orders. In October 2009, Boeing announced that it would locate that second line at the non-union facility.

In repeated statements to employees and the media, company executives cited the unionized employees' past strike activity and the possibility of strikes occurring sometime in the future as the overriding factors in deciding to locate the second line in the non-union facility.

The NLRB launched an investigation of the transfer of second line work in response to charges filed by the Machinists union and found reasonable cause to believe that Boeing had violated two sections of the National Labor Relations Act because its statements were coercive to employees and its actions were motivated by a desire to retaliate for past strikes and chill future strike activity.

"A worker's right to strike is a fundamental right guaranteed by the National Labor Relations Act," Mr. Solomon said. "We also recognize the rights of employers to make business decisions based on their economic interests, but they must do so within the law. I have worked with the parties to encourage settlement in the hope of avoiding costly litigation, and my door remains open to that possibility."

To remedy the alleged unfair labor practices, the Acting General Counsel seeks an order that would require Boeing to maintain the second production line in Washington state. The complaint does not seek closure of the South Carolina facility, nor does it prohibit Boeing from assembling planes there.

Absent a settlement between the parties, the next step in the process will be a hearing before an NLRB administrative law judge in Seattle, set for June 14, at which both parties will have an opportunity to present evidence and arguments.

Click here to view a fact sheet.

Printer-friendly version

Acting General Counsel Lafe Solomon releases statement on Boeing complaint

May 09, 2011

Contact:
Office of Public Affairs
202-273-1991
publicinfo@nlrb.gov
www.nlrb.gov

NLRB Acting General Counsel Lafe Solomon today responded to inquiries regarding a complaint issued April 20 against the Boeing Company with the following statement:

"Contrary to certain public statements made in recent weeks, there is nothing remarkable or unprecedented about the complaint issued against the Boeing Company on April 20. The complaint involves matters of fact and law that are not unique to this case, and it was issued only after a thorough investigation in the field, a further careful review by our attorneys in Washington, and an invitation by me to the parties to present their case and discuss the possibility of a settlement. Only then did I authorize the complaint alleging that certain statements and decisions by Boeing officials were discriminatory under our statute.

It is important to note that the issuance of a complaint is just the beginning of a legal process, which now moves to a hearing before an administrative law judge. That hearing, scheduled for June 14 in Seattle, is the appropriate time and place to argue the merits of the complaint. The judge's decision can further be appealed to the Board, and ultimately to the federal courts. At any point in this process, the parties could reach a settlement agreement and we remain willing to participate in any such discussions at the request of either or both parties. We hope all interested parties respect the legal process, rather than trying to litigate this case in the media and public arena."

Mr. Solomon made the same point today in a brief written response to a letter received earlier this month from Boeing General Counsel J. Michael Luttig.

For more information about the NLRB, please see our website at www.nlrb.gov. Click here to sign up for email delivery of news releases and more.

Printer-friendly version

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

May 12, 2011

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

Dear Mr. Solomon:

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

First, on March 26, 2010, the International Association of Machinists and Aerospace Workers ("IAM") charged[1] that the Boeing Company ("Boeing" or "Respondent") engaged in unfair labor practices under the National Labor Relations Act (the "Act").[2] On April 20, 2011, after an investigation into the IAM's charges, you, as Acting General Counsel of the NLRB, issued a Complaint and Notice of Hearing against Boeing pursuant to § 10(b) of the Act and § 102.15 of the Board's Rules and Regulations.

Since 1975, the IAM has been designated the exclusive collective bargaining representative ("Unit") of Boeing's production and maintenance employees in Washington State and Portland, Oregon.[3] The most recent collective bargaining agreement between Boeing and the IAM has been in effect since November 2, 2008, and is effective until September 8, 2012.[4]

The Board's Complaint arises from Boeing's transfer of its second 787 Dreamliner production line of three planes per month from the Unit to its non-union site in North Charleston, South Carolina in October of 2009.[5] The Board charged Boeing with "interfering with, restraining, and coercing employees" in the exercise of their rights, "discriminating in regard to the hire or tenure or terms or conditions of employment of its employees," and engaging "in

---

[1] *Boeing and International Association of Machinists and Aerospace Workers District Lodge 751*, affiliated with *International Association of Machinists and Aerospace Workers*, before the National Labor Relations Board, Region 19, United States of America, Case No. 19-CA-32431 [hereinafter "Complaint"].
[2] 29 U.S.C. § 151 *et seq.*
[3] COMPLAINT, *supra* note 1 at 4.
[4] *Id.*
[5] *Id.* at 5.

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

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

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

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

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

---

[6] *Id.* at 7.
[7] *Id.* at 4.
[8] PRESS RELEASE, BOEING COMPANY, *Boeing to Fight NLRB Complaint Back by Union*, (Apr. 20, 2011), *available at* http://boeing.mediaroom.com/index.php?s=43&item=1714 (last visited May 2, 2011).
[9] *Id.*
[10] Judson Berger, *Ex-Labor Board Chairman: Union-Backed Case Against Boeing 'Unprecedented'*, FOXNEWS, (Apr. 26, 2011), *available at* http://www.foxnews.com/politics/2011/04/26/ex-labor-board-chairman-union-backed-case-boeing-unprecedented/ (last visited Apr. 30, 2011).
[11] *Id.*
[12] LETTER, Alan Wilson, Attorney General of South Carolina, *et al.*, to Lafe E. Solomon, Acting General Counsel, National Labor Relations Board (Apr. 28, 2011) at 1.
[13] *Id.*
[14] Letter, Lafe Solomon, Acting General Counsel, NLRB, to Attorney Generals of Arizona, South Dakota, Utah, and South Carolina (Apr. 22, 2011). *See also* Melanie Trottman, *Labor Board Warns on Secret Ballots*, WALL STREET J., (Jan. 15, 2011), *available at* http://online.wsj.com/article/SB10001424052748704637704576082334037133042.html?mod=googlenews_wsj (last visited Mar. 1, 2011).
[15] *See* Editorial, *Back Door Card Check*, WALL STREET J., Sept. 14, 2010, at A20 (suggesting Craig Becker will push the NLRB to implement card check through the adjudicatory process).

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

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

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

1) All documents and communications referring or relating to the Office of General Counsel's investigation of Boeing, including but not limited to all communications between the Office of General Counsel and the National Labor Relations Board.

2) All documents, including emails and call logs, and communications between anyone in the Office of General Counsel or the National Labor Relations Board and the International Association of Machinists.

3) All documents, including emails and call logs, and communications between the Office of General Counsel or the National Labor Relations Board and any representative(s) of the Boeing Company.

4) All documents referring or relating to the Office of General Counsel's investigations of union election laws in Arizona, South Carolina, South Dakota, and Utah.

---

[16] Sam Hananel, *Feds threaten to sue states over union laws*, AP, (Jan. 14, 2011), *available at* http://news.yahoo.com/s/ap/20110114/ap_on_re_us/us_unions_secret_ballots (last visited Mar. 3, 2011).
[17] *Supra* note 14.
[18] Hananel, *supra* note 15, (quoting Phil Kerpen, Vice President for Policy, Americans for Prosperity).
[19] Steven Pearlstein, *Our modern twist on the old world political death spiral*, WASH. POST., (Feb. 27, 2011), *available at* http://www.washingtonpost.com/wp-dyn/content/article/2011/02/26/AR2011022600109.html (last visited Mar. 1, 2011).
[20] *Id.* (quoting Marshall Babson).

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

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

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

Sincerely,

Darrell Issa
Chairman
Committee on Oversight and
Government Reform

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

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

Enclosure

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

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

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

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

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

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.

8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157of the Rayburn House Office Building and the Minority Staff in Room 2471of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

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

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

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

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.