



United States Government  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, DC 20570  
[www.nlr.gov](http://www.nlr.gov)

July 11, 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 June 27, 2011 letter regarding an additional question for the June 17, 2011 hearing record. Specifically, the question from Congressman Ross is:

29 CFR 102.29 allows any person who wishes to intervene in a proceeding before the NLRB to file a motion to intervene. Section 10388.1 of the NLRB Casehandling Manual, Part One, Unfair Labor Practice Proceedings, states that the "Counsel for the General Counsel should not oppose intervention by parties or interested persons with direct interest in the outcome of the proceeding." As you know, the parties that moved to intervene in this case claim that if the remedy requested in the Complaint is granted they will be "discharge[d] from employment;" therefore, they have a "direct" interest in the outcome of the case. Please provide an explanation of why you believe the risk of job loss does not amount to a "direct interest in the outcome" of the NLRB's proceeding against Boeing. Since you do not oppose these same parties filing post-hearing briefs, why should they be forced to wait until the hearing has concluded to express their concerns?

In response, I affirm my belief, with which the administrative law judge and the Board agreed, that the putative employee intervenors have no legally cognizable interest in the instant case that would warrant full intervenor status. This in no way prevents the parties from calling any of these employees as witnesses to provide relevant testimony during the Boeing proceeding before the administrative law judge, nor does it preclude these employees from filing a post-hearing brief.

The employees stated that they sought to intervene to oppose the complaint and the requested remedy. This is the exact same ultimate objective as Boeing, their employer. As a matter of law, it must be presumed that their interests will be adequately represented, and, in fact, there is a presumption of adequacy of representation when the intervenor has the same ultimate objective as an existing

party. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1305 (9<sup>th</sup> Cir. 1997). Thus, their presence as intervenors at the hearing is not necessary in order to enable the Board to determine whether Boeing has violated the statute or to make an appropriate order against Boeing.

As to the remedy, to the extent that these employees assert that their interest in the proceeding is based on their belief that the remedy sought will cause their discharges, such speculation does not justify their intervention as nothing in the complaint requires Boeing to shut down any of its operations in South Carolina and they cannot and do not know what business decisions Boeing will make if the remedy sought is granted. Moreover, it is well settled that employees do not have any protectable interest in positions that they may have obtained due to unlawful employment decisions. *Donnelly v. Glickman*, 159 F.3d 405, 411 (9<sup>th</sup> Cir. 1998), citing *Dilks v. Aloha Airlines, Inc.*, 642 F.2d 1155, 1157 (9<sup>th</sup> Cir. 1981). Additionally, I note that two of the three employees are not even assigned to work on the second 787 production line at issue in this case and they have not advanced any factual basis for believing that the remedy will affect their positions in the facilities where they do work. Lastly, the remedy sought does not interfere with their Section 7 right to elect not to be represented by a union.

In summary, full intervenor status, which would require participation of these employees as additional parties in this complex case, is not necessary, creates procedural burdens, and adds to the parties' litigation costs.

If you have further questions, please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700.

Sincerely,



Lafe E. Solomon  
Acting General Counsel

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

DARRELL E. ISSA, CALIFORNIA  
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June 27, 2011

Mr. Lafe E. Solomon  
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Dear Mr. Solomon:

Thank you for appearing before the Committee on Oversight and Government Reform on June 17, 2011, at the hearing entitled, "Unionization Through Regulation: The NLRB's Holding Pattern on Free Enterprise." We appreciate the time and effort you gave as a witness before the Committee.

Pursuant to the Chairman's directions, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from Representative Dennis Ross, a member of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the question and include the text of the Member's question along with your response.

Please provide your response to these questions by July 11, 2011. Your response should be addressed to the Committee office at 2157 Rayburn House Office Building, Washington, DC 20515. Please also send an electronic version of your response by e-mail to Michael Bebeau, Assistant Clerk, at [Michael.Bebeau@mail.house.gov](mailto:Michael.Bebeau@mail.house.gov) in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Kristina Moore or Kristin Nelson at (202) 225-5074.

Sincerely,



Darrell Issa  
Chairman

Attachment

**Questions for Mr. Lafe E. Solomon**  
Acting General Counsel  
National Labor Relations Board

**Representative Dennis Ross**  
Committee on Oversight and Government Reform

**Hearing on “Unionization Through Regulation:  
The NLRB’s Holding Pattern on Free Enterprise.”**

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