

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

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

**THE BOEING COMPANY'S RESPONSE TO THE MOTION OF SIXTEEN STATE
ATTORNEYS GENERAL TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF
RESPONDENT THE BOEING COMPANY**

Respondent The Boeing Company ("Boeing") hereby responds to Judge Anderson's June 9, 2011 Order providing the parties with "an opportunity to submit positions" regarding the Motion to File *Amicus* Brief lodged by the Attorneys General of Sixteen States.¹ Boeing supports the motion and submits that it should be granted because States, under federal court rules, have an absolute right to have their *amicus* briefs accepted, and the States here also have significant interests in the outcome of this case.

¹ The represented States are Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Kansas, Michigan, Nebraska, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and Wyoming.

An *amicus* filing by a State should receive the same special deference by this tribunal that it receives under the federal rules: acceptance without condition. “[A] state may file an *amicus-curiae* brief without the consent of the parties *or leave of court.*” Fed. R. App. Proc. 29(a) (emphasis added); *see also* Supreme Court Rule 37(4) (“No motion for leave to file an *amicus curiae* brief is necessary if the brief is presented . . . on behalf of a State, Commonwealth, Territory, or Possession when submitted by its Attorney General . . .”). Recognizing that the interests of the several States may be affected by federal litigation, those rules give States the unqualified right to have their views heard on issues that the States have determined affect their interests through *amicus* participation. Section 10(b) of the NLRA directs that these proceedings conform to the federal rules where practical, and this tribunal has looked to the federal rules for guidance on how to rule on intervention issues. *See* Ruling on Motion to Intervene, 19-CA-32431 at 6–7 (June 8, 2011) (noting as “[h]ighly relevant” to a motion to intervene under the Board’s rules two Ninth Circuit cases interpreting the right to intervention under the Federal Rules of Civil Procedure). Thus, the absolute right of a State to file an *amicus curiae* brief under the federal rules and the rationale for that right require the acceptance of the *amicus curiae* filing here.

In addition, the States that seek to file the *amicus* brief are “interested parties” and their views on this case merit this tribunal’s consideration. 5 U.S.C. § 554(c). As the States’ motion relates, their “interest in the case arises from the potential economic impact on their states of the NLRB’s proposed course of action and from their desire to promote evenhanded application of the labor laws.” Motion 1. The discussion in the proposed *amicus* brief of the potential consequences to the respective States and the general public interest regarding the remedy sought by the Acting General Counsel plainly are views that warrant this tribunal’s careful consideration. *See eBay Inc. v. mercExchange, L.L.C.*, 547 U.S. 388, 390 (2006); *Winn-Dixie Stores, Inc.*, 147 N.L.R.B. 788,

790 (1964) (citing *Renton News Record*, 136 N.L.R.B. 1294 (1962)). Moreover, consideration of the *amicus* brief will not delay or otherwise adversely affect these proceedings. Accordingly, the States' motion to file an *amicus* brief should be granted.

Respectfully Submitted,

Dated: June 13, 2011

Handwritten signature of William J. Kilberg in black ink, written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that a copy of Respondent's Response to the Motion of Sixteen State Attorneys General to File an Amicus Brief was electronically filed on June 13, 2011 and sent by overnight mail to the following parties, and by email to the parties with email addresses indicated:

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DATED this 13th day of June, 2011



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