

**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**

**COUNSEL FOR ACTING GENERAL COUNSEL'S
MOTION TO STRIKE RESPONDENT'S INADMISSIBLE HEARSAY
INCLUDING EXHIBITS A THROUGH F TO ITS MOTION TO DISMISS**

Counsel for the Acting General Counsel moves to strike all portions of Respondent's Motion to Dismiss For Failure to State a Claim, or in the Alternative to Strike the Injunctive Relief Sought in ¶13(A) of the Complaint ("Respondent's Motion") which contain alleged facts not contained in the Complaint and Notice of Hearing ("Complaint") and which are inadmissible hearsay. Simply stated, in ruling on a motion to dismiss for failure to state a claim, it is not appropriate to look outside the pleadings themselves and consider additional facts alleged by the moving party. *Weiner v. Klais & Co., Inc.*, 108 F.3d 86, 88-89 (6th Cir. 1997). Additionally, Counsel for the Acting General Counsel moves to strike Exhibits A through F attached to Respondent's Motion as inadmissible hearsay.

A. Respondent's Motion and Exhibits are Inadmissible Hearsay

While a Motion to Strike typically identifies each specific item to be struck, Respondent's Motion is replete with its asserted facts which are outside the parameters of the Complaint and are inadmissible hearsay. Thus, rather than reiterating the

recitations set forth in Respondent's Motion, Counsel for Acting General Counsel sets forth below the inadmissible issues it requests to be struck from the Motion:

- The background of the 787 production line;
- Allegations regarding IAM's past and future strikes and the impact of such strikes;
- The decision-making process regarding the transfer of the second line to North Charleston, South Carolina, the establishment and status of a surge line in Everett, Washington, and the transferring of a sourcing supply program from Unit employees to its non-union facility in North Charleston or to subcontractors;
- Discussions between the IAM and Respondent leading up to the transfer of the second line;
- Exhibit A – a portion of the collective bargaining agreement between the parties;
- Alleged customer comments regarding the production of the 787 Dreamliner;
- The establishment, status, and impact of the placement of the second line in North Charleston;
- The impact of transferring the second line to North Charleston, on the surge line, and on the transfer of the sourcing program on Unit employees;
- Comments made by NLRB officials during the investigation of the instant charge and during settlement discussions;

- Comments by Respondent's officials made during a quarterly earnings conference call (Exhibit B), made in an internal memorandum (Exhibit C), and to various reporters (Exhibits D-F); and
- The impact of Counsel for the Acting General Counsel's requested remedy on Respondent.

Respondent relies heavily on the above litany of hearsay to support its Motion. Such asserted facts and statements are inappropriate not only because they amount to inadmissible hearsay, but also because they were submitted prior to the presentation of any evidence in this matter. These statements should be offered and ruled upon by the Administrative Law Judge only during the presentation of evidence at the hearing and not before such time. Respondent's submission of the above out-of-court statements and assertions is an improper attempt to use hearsay to establish a factual defense to the Complaint's allegations. Therefore, such hearsay statements, as presented, should not be considered in support of Respondent's Motion and should be stricken from the record. *Jenkins v. Winter*, 540 F.2d 742, 748 (8th Cir. 2008); Fed. R. Evid. 801(c), 802.

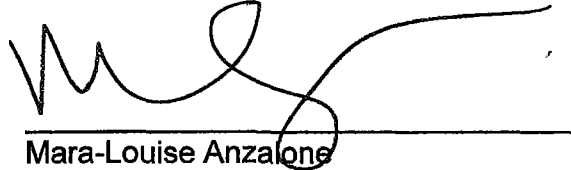
B. Conclusion

Respondent is offering the statements in its Motion and attached Exhibits to prove the truth of the statements contained in those documents. Such statements are inadmissible hearsay. Based on the foregoing, Counsel for the Acting General Counsel

asks that the Administrative Law Judge strike all the inadmissible hearsay described above in Respondent's Motion and attached Exhibits.

DATED at Seattle, Washington, this 21st day of June, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mara-Louise Anzalone', written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Counsel for Acting General Counsel's Motion to Strike Respondent's Inadmissible Hearsay Including Exhibits A through F to its Motion to Dismiss was served on the 21st day of June, 2011, on the following parties:

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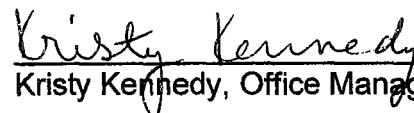
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