

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

THE BOEING COMPANY

and

INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE  
WORKERS DISTRICT LODGE 751,  
affiliated with INTERNATIONAL  
ASSOCIATION OF MACHINISTS AND  
AEROSPACE WORKERS

Case No. 19-CA-32431

**CHARGING PARTY'S OPPOSITION TO  
MOTION TO FILE AMICUS CURIAE BRIEF**

Charging Party International Association of Machinists and Aerospace Workers District Lodge 751, affiliated with International Association of Machinists and Aerospace Workers (hereinafter "Charging Party," "IAM", or "the Union"), files this response in opposition to the Motion of Sixteen State Attorneys General To File Amicus Curiae Brief In Support of Respondent The Boeing Company. The motion to file an amicus brief should be denied because the proposed amici do not have any unique information or perspective that would assist the Administrative Law Judge in this proceeding. Instead, the proposed amicus offer only unsupported assertions and assumptions of fact that are sharply disputed by the parties, and are primarily dedicated to extraneous, tangential issues relevant only to the political ambitions of the prospective amici.

There are no Board rules regarding motions to participate as Amici in Board proceedings. However, the Board has previously held that leave to participate as amicus curiae should be denied where the amici position is already adequately presented by the parties to the proceeding. *See, Ethan Allen, Inc.*, 231 NLRB 132, 135 n. 4 (1977), *enforced*, 596 F.2d 936 (10<sup>th</sup> Cir. 1979) (“[w]e deny Respondent's motion to remand and motion for oral argument and permission to file *amicus* briefs as the record and briefs adequately present the positions of the parties”); *Quick Shop Markets*, 204 NLRB 1150, 1153 n. 3 (1973), *enforced*, 492 F.2d 1248 (8<sup>th</sup> Cir. 1974), *cert. denied*, 419 U.S. 1031 (1974) (“[T]he Respondent's request for oral argument and for permission to file *amicus* briefs is hereby denied, as, in our opinion, the record... adequately present[s] the issues herein and the positions of the parties”); *Allied Chemical Corp.*, 165 NLRB 235, 236 n. 3 (1967) (Board denied leave to file amicus brief, finding the record, “including the Employer’s brief, adequately sets forth the issues and positions of the parties”).

Under established Board law, the present motion should be denied because the factual assertions and arguments made by the proposed amici merely mimic and restate the assertions<sup>1</sup> already made by the Respondent. For example, both Respondent and the proposed amici assert that Boeing’s decision to locate the second line in South Carolina was based upon legitimate business considerations (*See Answer at 2 ¶ 3; Motion to File Amicus at 4*) rather than Boeing’s stated motivation at the time of the decision; and both assert that Boeing’s decision has not affected the Pacific Northwest employees (*See Answer at 3 ¶¶ 5, 8; Motion to File Amicus at 4*). The rehash of Boeing’s arguments offered by the proposed amici about the facts in this case, prior to the start of the actual evidentiary trial, would prejudice the Charging Party, and, in light of the fact that the proposed amici have failed to articulate how the Administrative Law Judge would benefit from the proposed amicus curiae brief, their request should be denied.

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<sup>1</sup> Of course, all of these factual assertions are intensely in dispute.

Denying the motion would also be consistent Federal case law and the Federal Rules of Appellate Procedure<sup>2</sup>:

An *amicus* brief should normally be allowed when a party is not represented competently or is not represented at all, when the *amicus* has an **interest in some other case that may be affected** by the decision in the present case (though not enough affected to entitle the *amicus* to intervene and become a party in the present case), or **when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. Otherwise, leave to file an *amicus curiae* brief should be denied.**

*Jin v. Ministry of State Security*, 557 F.Supp.2d 131, 137 (D.D.C. 2008) (quoting *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1064 (7th Cir.1997)) (emphasis added).

The proposed amici have not indicated any other cases in which they have an interest that could be affected by a decision in this proceeding, nor have they put forth any unique information or perspective that would be helpful to the Administrative Law Judge. *See also*, *U.S. v. El-Gabrowni*, 844 F.Supp. 955, 957 n. 1 (S.D.N.Y. 1994) (“[t]he usual rationale for *amicus curiae* submissions is that they are of aid to the court and offer insights not available from the parties”) (citing *United States v. Gotti*, 755 F.Supp. 1157, 1158–59 (E.D.N.Y.1991)); *Animal Science Products, Inc. v. China National Metals & Minerals Import & Export Corp.*, 596 F.Supp.2d 842 (D.N.J. 2008) (“[a]n entity ‘seeking to appear as *amicus* must ... make a showing that [its] participation is useful or otherwise desirable to the court’”) (quoting *Woodfin Suite*

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<sup>2</sup> Section 10(b) of the NLRA explicitly provides that unfair labor practice proceedings should, “so far as practicable,” be conducted according to the “rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States.” 29 U.S.C. § 160(b). The NLRA contains no similar provision specifically embracing the Rules of Appellate Procedure. However, the Rules of Appellate Procedure have previously been applied by the Board, and cases following the Rules of Appellate Procedure should be helpful in this case. *See, e.g., Tiidee Products, Inc.*, 194 NLRB 1234, 1239 n. 17 (1972), *enforced*, 502 F.2d 349 (D.C. Cir. 1974), *cert. denied*, 417 U.S. 921 (1974), *cert. denied*, 421 U.S. 991 (1975); *Good Shepherd Home, Inc.*, 322 NLRB 259, 261 n. 2 (1996), *enforced*, 145 F.3d 814 (6<sup>th</sup> Cir. 1998).

*Hotels, LLC v. City of Emeryville*, 2007 WL 81911, at \*3, 2007 U.S. Dist. LEXIS 4467, at \*7-8 (N.D.Cal. Jan. 8, 2007)).<sup>3</sup>

The proposed amici's request should also be denied because they brief irrelevant issues. The primary issue of the proposed amici is a totally unrelated state government legislative issue of absolute zero concern to this proceeding. Specifically, amici seek to argue about Section 14(b) of the NLRA, which permits states to make unlawful fair share requirements in union contracts that require membership dues. There is no connection between this case, which involves Section 8(a)(1) and Section 8(a)(3), and the prospective amici's political positions regarding Section 14(b). Amici briefs are not proper vehicles for elected officials to advance their political positions and ambitions by arguing totally extraneous matters.

Even if there was some tangential relationship between these two separate sections of the NLRA, and amici indeed had something useful to provide (and not simply a regurgitation of Boeing's arguments), their brief should still be rejected as "[a]mici cannot insert new arguments, not made by a party, into a case." *Weaver's Cove Energy, LLC v. Rhode Island Coastal Resources Management Council*, 589 F.3d 458, 467 (1<sup>st</sup> Cir. 2009) (citing *Pharm. Research & Mfrs. of Am. v. Concannon*, 249 F.3d 66, 74 n. 5 (1st Cir.2001)).

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<sup>3</sup> The Board's draft "Guide to Board Procedures" issued by the Executive Secretary on December 10, 2010, is also instructive here. The Draft Guide states in pertinent part:

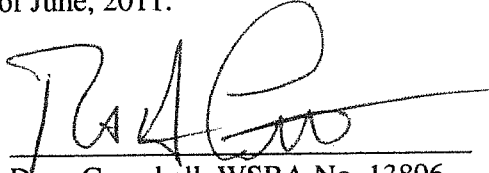
The Board looks most favorably on amicus motions from groups or organizations whose constituent members will be affected by the Board's decision. The Board is not interested in "me too" briefs. Generally, a proposed amicus should demonstrate that the Board will benefit from its brief, i.e., it has a unique perspective that the parties are not likely to have.

Draft Guide to Board Procedures, 52. Under these guidelines, the motion should be denied as proposed amici have no unique perspectives and merely seek to file a "me too" brief.

**CONCLUSION**

For the foregoing reasons, the motion to file amicus curiae brief should be denied.

Respectfully submitted this 13<sup>th</sup> day of June, 2011.



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of June, 2011, I caused the foregoing Charging Party's Opposition to Motion to File Amicus Curiae Brief to be e-filed with the National Labor Relations Board and to:

Hon. Clifford H. Anderson  
NLRB San Francisco Division of Judges

Richard Ahearn, Regional Director  
Mara-Louise Anzalone  
Peter Finch  
Rachel Harvey  
NLRB Region 19

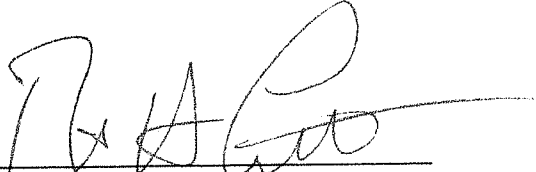
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