

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

THE BOEING COMPANY

and

Case 19-CA-32431

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

RULING ON MOTION TO FILE *AMICUS CURIAE* BRIEF

On June 16, 2011, the HR Policy Association filed a motion to submit an *amicus curiae* brief in the above captioned case. By order of June 20, 2011, I provided all parties an opportunity to submit their positions on the motion.

On June 27, 2011, the parties filed positions on the motion. The General Counsel does not oppose an *amicus* submission expressly limited to determination of the appropriate remedy in the case, but oppose any submission addressed to or received respecting the merits of the unfair labor practice allegations. The Charging Party opposes the *amicus* motion of the HR Policy Association entirely. The Respondent urges receiving the HR Policy Association's *amicus* brief on all elements of the case.

Arguments, Consideration, and Ruling

Based on the filings of the parties and the entire record of the proceedings to date, I consider and rule as follows.

The HR Policy Association identifies itself in its motion as:

the lead organization representing the chief human resources officers of more than 325 of the largest corporations doing business in the United States and globally. Collectively, these corporations employ more than ten million people in the United States-nearly nine percent of the private sector workforce-and approximately 20 million employees worldwide. They have a combined market capitalization of more than \$7.5 trillion. The Association seeks to improve public policy affecting the U.S. workplace, and advocate for competitive workplace initiatives that promote job growth and employment security.

The Respondent notes that, while the Respondent is a member of the HR Policy Association, no employees, officers, or directors of Respondent are members of the HR Policy Association's board of directors, and no one at Respondent had any connection to the HR Policy Association's decision to file the proposed *amicus* brief or its drafting.

While the Board regularly allows the submission of *amici curiae* briefs to itself and on occasion solicits them, such submissions to administrative law judges are far less common and no procedural rule or decisional law establishing standards on the issue is in place. This is likely because an administrative law judge in an unfair labor practice proceeding is bound to follow current law without considering any argument that Board law should be changed. None the less, receiving and considering such filings falls in my view within the general authority inherent in an administrative law judge's duties and powers to regulate the course of the hearing. *George Joseph Orchard Siding, Inc.*, 325 NLRB 252 (1998).

Further, I granted an earlier motion to submit an *amicus curiae* brief on the issue of remedy in this case filed by 16 States' Attorneys' General and the Board addressing a separate motion to intervene, overruling my contrary order, granted three individuals associated with the Respondent's North Charleston facility the right to file a post hearing brief. The Board stated in part in its Order of June 20, 2011, addressing the motion of the three individuals:

In the unique circumstances of this case, we find that the three individuals have articulated a sufficient interest in this proceeding to grant them limited intervention solely for the purpose of filing a post-hearing brief with the administrative law judge.

My view of the desirability of receiving *amicus* briefs, now informed by the Board's earlier ruling reversing my denial of a movants request for the right to file a post hearing brief, as described above, remains the same. In agreement with the Charging Party and the General Counsel, and based on their argument and cited authority, I find insufficient need or likely benefit to justify receiving the *amicus* brief on the merits of the unfair labor practices alleged herein. Further, in agreement with the Respondent and without the objection of the General Counsel, and based on their argument and cited authority, I find it is appropriate to receive the proffered *amicus curiae* brief on the issue of any remedy in the case should the complaint be found to have merit in whole or in part.

Having found the proffered *amicus curiae* brief should be considered only on the question of remedy and not for the determination of the merits of the alleged unfair labor practices, I will receive it in its entirety into the record, but explicitly limit its application and consideration to the matter of remedy.

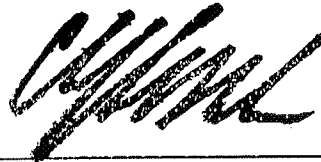
Based upon all the above, I issue the following:

ORDER¹

The HR Policy Association's Motion to File an *Amicus Curiae* Brief is granted in part and denied in part:

1. To the extent the *Amicus Curiae* Brief is offered to address the violations of the Act alleged in the complaint herein, the motion is denied.
2. To the extent the *Amicus Curiae* Brief is offered to address the issue of appropriate remedy, should the allegations of the complaint be sustained in whole or in part, the motion is granted.
3. With the limitations of use noted, the brief is received into the record.

Issued at San Francisco California, this 28th day of June, 2011.



Clifford H. Anderson
Administrative Law Judge

¹ Appeals from administrative law judge rulings on motions are governed by the Board's Rule 102.26.

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**SERVICE OF: Ruling on HR Policy Association Motion to File Amicus Curiae Brief
by Judge Clifford Anderson dated 6-28-2011**

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Served by: Susan George at 415 356-5255, June 28, 2011