

**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 19-CA-32431

**CHARGING PARTY’S RESPONSE TO THE AUGUST 22, 2011 LETTER FROM
BLOOMBERG L.P. REGARDING THE PROTECTIVE ORDER**

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”), hereby responds to the letter to the Administrative Law Judge on behalf of Bloomberg L.P. seeking modification of the August 12, 2011 protective order.

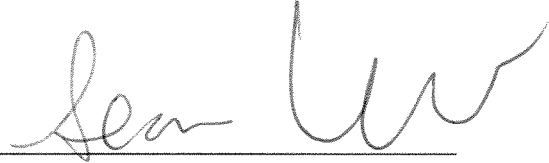
Charging Party notes that although Bloomberg’s letter was filed in the Board’s electronic filing system, Bloomberg is not currently a party to this proceeding. Bloomberg’s letter does not purport to be a motion to intervene under Board Rules and Regulations § 102.29. As Bloomberg is neither a party nor a putative intervenor in this matter, Bloomberg does not have standing to bring a motion to modify the Administrative Law Judge’s protective order. *See Wal-Mart Stores, Inc.*, 348 NLRB 833, n. 3 (2006) (“[i]nasmuch as Local 120 was denied intervenor status... it lacks standing to file motions and make other submissions in this proceeding”).

Charging Party agrees with Bloomberg's concerns that the hearing room should not be closed to the press and public except when there is a real need to do so. This is a highly publicized law enforcement proceeding. The public has a recognized right to know "that standards of fairness are being observed... [and] that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984).

However, Charging Party agrees with Counsel for the Acting General Counsel that Bloomberg's concerns appear to be adequately addressed and safeguarded by the existing protective order language issued by the Administrative Law Judge. Section V.B of the protective order states that parties should notify the Administrative Law Judge and the other parties when they believe it is likely that confidential material will be "referred to." Bloomberg rightly notes that this is a somewhat murky standard. However, the protective order further provides that the room shall actually be *cleared*, "when witnesses testify or fairly are expected to testify in a manner *revealing* confidential information" (emphasis added). Bloomberg's suggestion that "referred to" should be replaced with "disclosed" doesn't appear to change this at all. Under the current Order, merely "referring" to confidential information does not require the hearing room to be closed – it only provides a basis to provide notice to the judge and parties.

For the above reasons, the Charging Party submits that the current protective order already addresses the concerns articulated in the letter submitted by Bloomberg, and that Bloomberg's requested modification is not necessary.

Respectfully submitted this 26th day of August, 2011.



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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2011, I caused the foregoing Response to the August 22, 2011 Letter From Bloomberg L.P. Regarding the Protective Order to be e-filed with the National Labor Relations Board Division of Judges and a copy to be e-mailed to the following:

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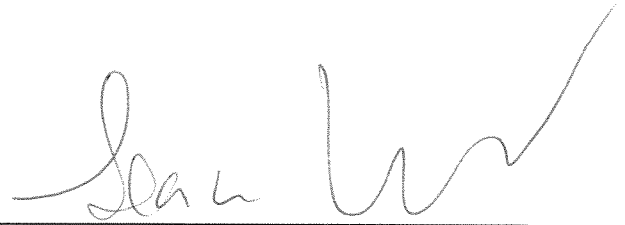
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A handwritten signature in black ink, appearing to read "Sean M. Leonard", written over a horizontal line.

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