UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19

THE BOEING COMPANY,
Respondent,

Case No. 19-CA-32431

and

IAM DISTRICT LODGE 751,
Charging Party.

REQUEST FOR SPECIAL PERMISSION TO APPEAL RULING DENYING INTERVENORS' MOTION TO INTERVENE

Pursuant to NLRB Rule and Regulation 102.26, Intervenors Murray, Ramaker, and Going request special permission of the Board to appeal from Administrative Law Judge Clifford Anderson's ruling denying their Motion to Intervene in the above-captioned case.

Intervenors set forth the grounds for granting this request for special permission to appeal and for overturning the ALJ's ruling below. These grounds are argued fully in the Intervenors' Appeal, which is filed with this Request. The Intervenors urge the Board to rule on this Request and Appeal promptly, before the start of the hearing, set to begin June 14, 2011, in Seattle, Washington.

This Request for Special Permission to Appeal should be granted and the ALJ's ruling overturned for the following reasons:

1) The Trial on this matter is scheduled to begin in 4 days and the Board must rule immediately to allow Intervenors opportunity to attend the trial.

2) The Intervenors will face irreparable harm if they are not allowed to participate as full parties

in this proceeding.

3) The ALJ erred when he ruled that the Intervenors had no "direct financial interest" in the outcome of this case. ALJ Ruling at 4.

4) The ALJ erred when he ruled that the Intervenors had no legally significant or direct interest in the proceeding. ALJ Ruling at 3-6.

5) The ALJ erred when he ruled that the current parties will adequately represent their own interests and ignored whether the separate interest of the Intervenors will be represented. ALJ Ruling at 8.

6) The ALJ erred when he ruled that the Intervenors' participation would further "complicate and protract and delay" the proceeding. ALJ Ruling at 8.

7) The ALJ erred when he treated the Acting General Counsel's legal theory in this case as similar to all other Unfair Labor Practice prosecutions, and should have treated it as exceptional, requiring the presence of Intervenors to protect their rights and interests.

Dated this 9th day of June, 2011

Respectfully submitted,

/s/ Glenn M. Taubman
/s/ Matthew C. Muggeridge

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INTERVENORS' APPEAL OF RULING DENYING MOTION TO INTERVENE

Pursuant to NLRB Rule and Regulation 102.26, Intervenors Murray, Ramaker, and Going set forth the grounds on which the Board should grant their appeal from Administrative Law Judge Clifford Anderson's ruling denying their Motion to Intervene in the above-captioned case.

To facilitate a prompt ruling from the Board, Intervenors attach to this brief all the relevant filings: Intervenors' Motion To Intervene (Exhibit A); The Boeing Company's Response to Motion to Intervene (Exhibit B); The Acting General Counsel's Opposition To Motion To Intervene (Exhibit C); The Charging Party's Opposition To Motion To Intervene (Exhibit D); Intervenors' Reply To AGC and Charging Party's Opposition (Exhibit E); and ALJ Clifford Anderson's Ruling On Motion To Intervene (Exhibit F).

I. Introduction

This Appeal is from ALJ Cifford Anderson's Ruling on Motion To Intervene ("ALJ's Ruling")(Exhibit F) in *IAM District Lodge 751(Charging Party)/The Boeing Company*

(Respondent), Case No. 19-CA-32431. The Acting General Counsel issued a complaint on April 20, 2011. On June 1, 2011 the Intervenors filed a Motion To Intervene (Exhibit A). On June 3, ALJ Anderson issued the AGC, the Charging Party, and the Respondent with a "Provision of Parties an Opportunity To Submit Positions on Motion To Intervene" with a deadline of 12 Noon (PDT), June 7, 2011. All Parties responded with the AGC and Charging Party opposing (Exhibits C, D), and the Respondent supporting (Exhibit B) the Intervenors' Motion. On June 8, 2011, the ALJ denied the Motion to Intervene. Also on June 8, the Intervenors filed a Reply To the AGC and Charging Party's Opposition to their Motion (Exhibit E). The Intervenors did not receive a copy of the ruling from the ALJ, despite the certificate of service stating that a copy had been served by facsimile to the attorneys for Intervenors.[1]

The Hearing in this case is set to begin June 14, 2011 at 9 A.M. (PDT) in Seattle, Washington.

II. Argument

This Request for Special Permission to Appeal should be granted and the ALJ's ruling overturned for the following reasons:

1. The Board should rule immediately.

The trial on this matter is scheduled to begin in 4 days and the Board must rule immediately to allow Intervenors the opportunity to attend the trial.

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[1]The Intervenors' do not raise a legal objection to the lack of service. Nevertheless, the Board should note that Intervenors' only learned of the ALJ Ruling and obtained a copy through Respondent's Counsel at 6:20 P.M. local time, June 8, 2011. Evidently, the ALJ did not consider any of the Intervenors' arguments contained in their Reply (Exhibit E). The lack of service is noted merely to emphasize that the Board should give the Intervenors' Appeal full and adequate consideration and issue its ruling promptly.

The Intervenors are hourly employees based in Charleston, South Carolina. The Intervenors will likely need several days notice to make personal and travel arrangements.

2. The Intervenors will face irreparable harm if they are not allowed to participate as full parties in this proceeding.

The ACG's legal theory in this case is controversial, *i.e.*, that statements by Boeing executives connecting past work stoppages in Washington with decisions to install new operations outside Washington were "inherently destructive of the rights guaranteed employees by Section 7 of the Act." Complaint ¶ 8(c). Even more controversial is the AGC's proposed remedy: to have the "[Puget Sound] Unit operate [Boeing's] second line of 787 Dreamliners aircraft assembly production in the State of Washington, utilizing supply lines maintained by the [Puget Sound] unit in the Seattle, Washington, and Portland, Oregon area facilities."

The proposed remedy will cause the closure of at least some of Boeing's South Carolina operations and the corresponding elimination of many jobs, including those of at least some of the Intervenors. The Intervenors will self-evidently suffer irreparable harm if they are not allowed to intervene in this case as full parties: they and hundreds of other employees will lose their jobs. If the AGC's novel theory prevails with the ALJ and if the draconian remedy is adopted, many employees will lose their jobs. *See*, Intervenors' Declarations attached to their Motion to Intervene (Exhibit A).

As argued throughout their Motion To Intervene (Exhibit A) and their Reply To The AGC's and Charging Party's Opposition (Exhibit E), Intervenors have a direct, legally protectable interest in this case. The AGC and the Union will not protect the Intervenors' interest. Boeing will protect its own business and other interests, which are not co-terminous with the Intervenors' interests and do not necessarily include saving the Intervenors' jobs in North Charleston or vindicating their

Section 7 rights.

3. The ALJ erred when he ruled that the Intervenors had no "direct financial interest" in the outcome of this case. ALJ Ruling at 4.

The ALJ distinguished the present Intervenors from those in other cases where "employee intervenors were allowed to participate in unfair labor practice cases dealing with dues obligations of groups that inlcude the employees seeking intervention." The ALJ reasoned that where dues were involved "a direct financial interest in the outcome of the unfair labor practice case is evident." ALJ Ruling at 4.

All Section 8(a)(1) and (3), 8(b)(1) and (2) unfair labor practice allegations involve an infringement of an employee's Section 7 rights and many involve money. Here the ALJ reasons that a non-party employee might have a stake in a ULP case involving the payment of dues but not in an unfair labor practice litigation which may result in the loss of permanent employment. The loss of permanent employment is a "direct financial interest" far greater than the payment or reimbursement of union dues. To reason that the Intervenors and their co-workers have no "direct financial interest" in the outcome of this litigation is to ignore the obvious: they will lose their jobs, which they obtained on a permanent basis, and which have become suspect solely because of the AGC's novel legal theory underpinning this Complaint.

4. The ALJ erred when he ruled that the Intervenors had no "legally significant" or "direct interest" in the proceeding. ALJ Ruling at 3-6.

The ALJ analogizes the situation of the Intervenors here to that of any other employee who might stand to lose "work benefits or [his or her] job" as a result of a Board remedial order in a Section 8(a)(1) or (3) unfair labor practice proceeding. Such a "potential intervenor" "might seek on

that basis to intervene in the wrongful discrimination litigation and oppose any remedy that might reinstate the former employee or transfer work back to the discriminated against employee to the intervening employee's detriment." ALJ Ruling at 6. Such litigation and remedial resolution are "common" and allowing intervention would open the courthouse doors to "myriad beneficiaries."

The ALJ erred in this analysis, which followed the arguments made by the Union and AGC in their oppositions. In the first place, the present case alleges a novel and untested theory of discrimination which is not "common" at all. To the contrary: it is unprecedented. It has raised widespread public criticism inside and outside the legal community.

Secondly, allowing intervention here would not create a dangerous precedent whereby all similarly situated "beneficiaries" of employer discrimination would be able to intervene by right in the litigation of the underlying unfair labor practice. The NLRB rules and precedents leave the question of intervention to the sound but not unfettered discretion of the ALJ. Intervenors contend that the present case is too novel and dissimilar from the precedents relied on which keep intervenors out as matter of principle.

Thirdly, the Board should consider the incoherence of the principle relied on by the ALJ. Namely, an allegation of discrimination by the General Counsel, by itself, removes any legal interest the employee might have in his job. Further, the Board should consider why intervention might be appropriate in questions concerning representation –i.e., involving unions– but not involving Section 7 rights of employees. ALJ Ruling at 3-4.

5. The ALJ erred when he ruled that the current parties will adequately represent their own interests and ignored whether the separate interest of the Intervenors will be represented. ALJ Ruling at 8.

Whether Boeing and the Union and the AGC adequately represent their own interests in this case is irrelevant. The Intervenors argue that no current party will represent the Intervenors' interests: protecting their Section 7 Rights and saving their jobs. This point is argued more fully in the Intervenors' Reply to the Charging Party and AGC's Opposition. Exhibit E at 5-6. The ALJ made no mention of whether Intervenors' interest in this case will be adequately represented, no doubt on the grounds that he had concluded the AGC's allegation of discrimination had effectively negated any interest.

6. The ALJ erred when he ruled that the Intervenors' participation would further "complicate and protract and delay" the proceeding. ALJ Ruling at 8.

The ALJ assumed that the presence of the Intervenors would burden the proceedings and rejected the viability of any limited participation. The ALJ did not consider the Intervenors' arguments made in their reply regarding the limited nature of their intervention, both in terms of testimony and "complication" of the proceedings. Intervenors' Reply at 3-4. The Intervenors recognize and stress again in this Appeal, as they did in their Reply, that they have neither the ability nor the intent to make the arguments, scrutinize the evidence, or involve themselves in the trial examination and cross-examination of the parties' witnesses in which the other parties will necessarily need to engage to make or rebut the AGC's case.

The Intervenors do not wish to make Boeing's case. They have a different case to make: that the AGC's prosecution and proposed remedy implicates their Section 7 rights. To that end, the Intervenors' participation will not "complicate and protract and delay" the proceedings. At most, the presentation of their evidence will consume one-half to one trial day.

7. The ALJ erred when he treated the Acting General Counsel's legal theory in this case

as similar to all other Unfair Labor Practice prosecutions, and should have treated it as exceptional, requiring the presence of Intervenors to protect their rights and interests.

As argued above and in their Reply, the Intervenors contend that the present case is a departure from Board precedent. As such, a broad application of the Board's standard approach to employee intervention is warranted. Assuming that the ALJ dutifully applied Board precedent he should still be overruled owing to the novelty of this case and the high human cost of the proposed remedy: the loss of many jobs and the economic devastation of a small city. The Board should not allow employees to go unrepresented in this case. The Intervenors do not contend that they have the legal arguments proper to an employer to rebut the AGC's case. The Intervenors contend that intervention here is proper to vindicate the potential employee Section rights which will otherwise receive no consideration.

Dated this 9th day of June, 2011

Respectfully submitted,

/s/ Glenn M. Taubman
/s/ Matthew C. Muggeridge

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Request for Special Permission to Appeal and Appeal was filed electronically with the NLRB's Executive Secretary using the NLRB e-filing system, and was sent via facsimile or e-mail to the following additional parties:

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/s/ Matthew Muggeridge
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EXHIBIT A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19

THE BOEING COMPANY,
Respondent,

Case No. 19-CA-32431

and

IAM DISTRICT LODGE 751,
Charging Party.

MOTION TO INTERVENE

I. INTRODUCTION: Pursuant to Section 102.29 of the Board's Rules and Regulations, employees Dennis Murray and Meredith Going, Sr. ("Intervenors") hereby move to intervene in this case, to oppose the Acting General Counsel's Complaint and the draconian remedy that it seeks, which is, in essence, the closure of their work site and their discharge from employment in South Carolina by The Boeing Company ("Boeing"). (*See* Complaint and Notice of Hearing, ¶ 13, issued on April 20, 2011; Answer to Complaint, filed on May 4, 2011, especially Defense ¶ 12; and Response to Specific Allegations of the Complaint ¶ 13(b)).

Under Section 102.29 of the Board's Rules and Regulations, the Regional Director should grant this Motion or, alternatively, refer it to the ALJ for a decision at or before the hearing set for June 14, 2011. In either event, this Motion should be granted because

the Intervenors have a direct and concrete stake in the outcome of this case, as their attached Declarations show.[1] *See also* Complaint and Notice of Hearing, ¶ 13; Answer to Complaint, Defense ¶ 12; and Response to Specific Allegations of the Complaint ¶ 13(b). Intervenors seek to fully participate as parties in this case, as they have relevant evidence concerning their opposition to representation by the IAM at the Boeing facility in North Charleston, South Carolina, including Mr. Murray's successful decertification of the same union in *The Boeing Company/IAM*, Case No. 11-RD-723. Intervenors also wish to participate to oppose the draconian remedies sought by the General Counsel, to wit: the shut down of their work site and their discharge by Boeing in South Carolina.

Alternatively, Intervenors wish to submit a post-hearing brief on behalf of themselves and all other employees at Boeing's North Charleston plant, particularly as the case relates to: a) the remedies sought by the General Counsel; b) Intervenors' exercise of their Section 7 rights to reject unionization by the IAM; and c) Intervenors' desire to work in South Carolina in a nonunion setting and to enjoy the protections of Section 14(b) of the Act, 29 U.S.C. § 164(b) and the South Carolina Right to Work law, S.C. Code Ann. §§ 41-7-10 through 90.

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[1] According to the Casehandling Manual, 10388.1, Counsel for the General Counsel should not oppose intervention by parties or interested persons with direct interest in the outcome of the proceeding. Sec. 102.29, Rules and Regulations; *Camay Drilling Co.*, 239 NLRB 997 (1978).

II. INTEREST OF THE PROPOSED INTERVENORS: In recent years Boeing has established a new "final assembly and delivery" aircraft manufacturing plant in North Charleston, South Carolina. Thousands of workers have been hired to staff the new facility and production of large commercial aircraft is slated to begin in July 2011. Intervenors are current Boeing employees working in that North Charleston facility or other related facilities located nearby. They have a direct and tangible stake in the outcome of this case because their employment will almost certainly be affected or even terminated if the General Counsel's proposed remedy is imposed. (*See* Declarations of Dennis Murray and Meredith Going, Sr.; *see also* Complaint and Notice of Hearing, ¶ 13; Answer to Complaint, Defense ¶ 12; and Response to Specific Allegations of the Complaint ¶ 13(b)). Although the General Counsel's press release[2] and his Complaint assert that he does not seek to shut down Boeing's aircraft assembly plant in North Charleston, a shut down will be the inevitable result if the General Counsel succeeds, since Boeing is currently training its workforce specifically for the Dreamliner assembly work. At best, the plant will be disabled and the Intervenors will be without jobs if the remedy sought in ¶ 13 of the Complaint is ordered. Indeed, Boeing's Answer to the Complaint makes it clear that Intervenors will lose their jobs with Boeing in South

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[2] The NLRB's press release can be found at http://www.nlrb.gov/news/national-labor-relations-board-issues-complaint-against-boeing-company-unlawfully-transferring- (last reviewed May 14, 2011). It states that: "To remedy the alleged unfair labor practices, the Acting General Counsel seeks an order that would require Boeing to maintain the second production line in Washington state. The complaint does not seek closure of the South Carolina facility, nor does it prohibit Boeing from assembling planes there."

Carolina if the General Counsel's proposed remedy is adopted. *See* Complaint and Notice of Hearing, ¶ 13; Answer to Complaint, Defense ¶ 12; and Response to Specific Allegations of the Complaint ¶ 13(b).

Moreover, even if Boeing offered the Intervenors an opportunity to move to Washington or Oregon to perform the work that the General Counsel seeks to move to those states, Intervenors would oppose such a move because: a) they have chosen to exercise their rights as citizens of the United States to live and work in South Carolina; b) they have chosen to exercise the rights provided to them under Section 14(b) of the NLRA, 29 U.S.C. § 164(b), and the South Carolina Right to Work law, S.C. Code Ann. §§ 41-7-10 through 90, to refrain from joining or supporting any union; c) Mr. Murray and many of his co-workers have already chosen to exercise the rights provided them under Sections 7 and 9 of the NLRA by voting to decertify the IAM when it was their representative at the same North Charleston facility; and d) relocating to Washington or Oregon would involve severe financial and personal hardship for the intervenors. (*See* Murray Declaration at pages 6-7; Going Declaration at pages 3-4). All of these rights will be forfeited even if Intervenors are offered jobs with Boeing in the forced-unionism states of Washington and Oregon.

Intervenors stress that many of the affected employees have already rejected the IAM when it represented workers in the North Charleston Boeing facility in 2009. In September 2009, Boeing employees voted to decertify the IAM at their facility by an

overwhelming vote of 199 to 68. (*See* Murray Declaration at pages 2-4, describing the events surrounding NLRB Case No. 11-RD-723). Intervenors seek to fully participate in the trial of this case to introduce facts and evidence concerning employees' efforts to decertify the IAM at the plant in question before and after it was acquired by Boeing. After their successful decertification, Mr. Murray and his co-workers continued to work at the plant with the understanding that they would be working (happily) at a non-union factory.

Most importantly, one of Mr. Murray and other employees' motivations for decertifying the IAM was to make the South Carolina facility more attractive to Boeing, which was then in the process of weighing where to build a second "final assembly and delivery" work site. The decertification of the IAM in Case No. 11-RD-723 took place after Boeing had bought the South Carolina plant, but before it had made its decision to locate the 787 Dreamliner assembly project there. Mr. Murray's testimony would show that Boeing's initial purchase of the plant was not motivated by the fact that it was a union-free facility, since it bought the plant before the decertification, while the IAM was the incumbent union.

This testimony is indispensable to show that Boeing did not make its decision to locate the 787 production in South Carolina out of a desire to "punish" union workers in Washington, as the complaint alleges. (*See* Complaint at ¶¶ 7-8). Boeing can hardly be accused of committing a ULP for recognizing the South Carolina-based employees'

desire to work in a union-free environment, and that the South Carolina facility would be more attractive if it operated without the IAM's oppressive work rules and labor unrest. All of this is more than relevant to the hearing, on both the merits of the case and the remedy.

In short, Intervenors' ability to contract with and work for Boeing in South Carolina is in grave jeopardy as a result of the General Counsel's Complaint, as are their rights to reject unionization by the IAM and work in a state that forbids compulsory unionism. The General Counsel's proposed remedy favors the interests of unionized workers in Washington and Oregon over the Section 7 rights of employees in South Carolina, who have chosen to work in a nonunion setting free from IAM's compulsory unionism and economic coercion.

III. ARGUMENT IN SUPPORT OF MOTION: In a wide variety of circumstances employees have been allowed to intervene in ULP cases against their employers. Most recently, for example, in *New England Confectionary Co. & Bakery*, 356 NLRB No. 68 (2010), an employee who had initiated a decertification petition was allowed to intervene in an unfair labor practice case filed against his employer alleging unlawful assistance with the decertification petition. This is only the most recent example of the Board allowing liberal intervention where a party has a concrete interest in the proceedings.

Directly on point to this case is *Camay Drilling Co.*, 239 NLRB 997 (1978).

There, the Trustees of various union pension funds moved to intervene, claiming that the trusts they administered were entitled to receive increased fringe benefit contributions depending on the results of the underlying case. The Trustees asserted that they had a direct financial interest in "both the resolution of the alleged unfair practices *and* in any remedy fashioned by the Board." *Id.* at 997, emphasis added. The ALJ denied the Trustees' motion to intervene on the ground that they would have no interest in the case until he first decided the threshold issue, *i.e.*, whether the Act had been violated. Thus, in the ALJ's view, the Trustees' interest would not manifest itself until a compliance proceeding was held, if indeed one were to be held.

The Board reversed the denial of the Trustees' motion to intervene. It relied upon Section 554(c) of the Administrative Procedure Act[3] to hold that the Trustees must be allowed to intervene at an early stage to challenge the ultimate remedy that is being sought. Moreover, the Board noted that the interests of the Trustees were not necessarily identical to that of the Charging Party union.

The same analysis holds true in this case. Although Boeing will surely and ably represent its own interests in opposing the General Counsel's Complaint and proposed remedy, it has no Section 7 rights to refrain from unionization, no rights under Section 9

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[3] Section 554(c) of the Administrative Procedure Act provides, in pertinent part: "(c) The agency shall give all interested parties opportunity for- (1) submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit."

to decertify an unwanted IAM union (unlike Mr. Murray and his co-workers), and no rights under South Carolina's Right to Work law to refrain from joining or supporting a union. In short, given the draconian remedy sought in this case and the Intervenors' economic devastation that a successful prosecution portends, simple fairness and due process require that Intervenors be heard and allowed to participate in this case.

Perhaps the most important and analogous case to consider is *Local 57, International Ladies' Garment Workers Union v. NLRB,* 374 F.2d 295 (D.C. Cir. 1967). There, the employer was found to have violated the NLRA by maintaining a "runaway shop" that unlawfully moved from New York to Florida. The Board did not order the employer to move back to New York, but rather ordered it to recognize the union at its new Florida operations, notwithstanding the fact that there was no evidence that any of the new Florida-based employees desired the union's representation. A 2-1 majority of the court of appeals refused to enforce the Board's order to recognize the union in Florida, holding it punitive and violative of those Florida-based employees' Section 7 rights. In doing so, the majority bemoaned the fact that the Florida-based employees did not intervene in the case, since no other litigant could realistically speak for them. 374 F.2d at 300 ("That these Florida workers are not before us asserting their legally protected right to freedom of choice of a bargaining agent is not controlling. Indeed their very absence indicates the need for this court to carefully scrutinize the Board's remedy."). Even the dissenting judge lamented the absence of the Florida-based employees from the

case. "[T]he extent to which [the Florida employees] feel aggrieved by the circumstance is wholly speculative, since none of them are before us complaining of the deprivation of their freedom of choice...." *Id.* at 304 (McGowan, J., concurring in part and dissenting in part).

In the instant case, speculation as to what affected employees *would have* said about the IAM and General Counsel's efforts to terminate their employment in South Carolina is unnecessary. Intervenors – flesh and blood Boeing employees – wish to be heard regarding all aspects of this case and the effect that the proposed draconian remedy will have on them, so that the ALJ, the Board and the federal courts will have no doubt about where they stand: in opposition to both IAM representation and to a Complaint and proposed remedy that would see them fired from their jobs in South Carolina or, at best, provided with an "option" to transfer to the forced-unionism state of Washington where they would be represented by a union they have already rejected.

Other cases are on point as well. In *Gary Steel Products Corp.*, 144 NLRB 1160, 1160 n.1, 1162 (1963), an employee was permitted to intervene on behalf of himself and 62 other employees where the case concerned a union representative's misrepresentations to employees during an organizing campaign. The employer had refused to bargain with the union that filed the ULP charge, and the Board held it appropriate for the affected employees to participate in the case to assert their own rights and to help their employer's defense.

Similarly, in *J.P. Stevens & Co.*, 179 NLRB 254, 255 (1969), employees who had signed authorization cards were permitted to intervene during the course of the ALJ trial, where the complaint claimed that their employer had unlawfully restrained or interfered with a union organizing campaign. The employee-intervenors were allowed to cross-examine all witnesses, call their own witnesses and file exceptions to the Board as full parties.

In *Washington Gas Light Co.*, 302 NLRB 425, n.1 (1991), an employee revoked his dues check off, and the employer stopped collecting dues from him. When the union filed a ULP charge against the employer to force a resumption of the dues deductions, the employee was allowed to intervene to represent his own interests and help defend his employer. In *Sagamore Shirt Co.*, 153 NLRB 309 (1965), 64 employees were allowed to intervene to establish a claim that they constituted a majority of the employees and that they did not wish to be represented by the union.

These cases show that employees have been allowed to intervene in a variety of settings to protect their interests and help defend their employer. This case is no different, and, indeed, the grounds for intervention are even stronger in this case than in many of the others.

Finally, unions have also been allowed to intervene in a variety of circumstances. In *Valencia Baxt Express, Inc.*, 143 NLRB 211 (1963), the Seafarers union was certified as the employees' representative, but the employer thereafter adjusted grievances via a

rival union. The employer later withdrew recognition of the Seafarers and instead recognized a rival union. In the subsequent ULP proceedings, intervention by one of the competing unions was allowed, as it stood to lose recognition if the rival union prevailed.

Similarly, in *Harvey Aluminum*, 142 NLRB 1041, 1043 (1963), a union was allowed to intervene in a case in which discharged employees were the charging parties. In *Frito Co. v. NLRB*, 330 F.2d 458 (9th Cir. 1964), unions were also allowed to intervene in a case in which they were not the Charging Party or the Respondent.

CONCLUSION: Intervenors respectfully move to intervene to defend their interests as non-unionized workers wishing to contract their services to Boeing in the State of South Carolina. They have a tangible interest in not being fired at the behest of the IAM and the General Counsel. They wish to introduce evidence regarding their decertification of the IAM and their legally-protected choice to work at a non-union factory in South Carolina, and to remain working at that factory and have it remain non-union without interference from the NLRB General Counsel.

Alternatively, and at the very least, they should be allowed to file a brief opposing the General Counsel's Complaint and the proposed remedy so their interests can be heard.

Respectfully submitted,

/s/ Glenn M. Taubman
/s/ Matthew C. Muggeridge

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Motion to Intervene and the attachments were filed electronically with the NLRB Regional Office using the NLRB e-filing system, and was sent via e-mail to the following additional parties:

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this 31st day of May, 2011.

/s/ Glenn M. Taubman

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Declaration of Dennis Murray

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19

THE BOEING COMPANY,
Respondent,

Case No. 19-CA-32431

and

IAM DISTRICT LODGE 751,
Charging Party.

DECLARATION OF DENNIS MURRAY
IN SUPPORT OF MOTION TO INTERVENE

Dennis Murray, pursuant to Section 1746 of the Judicial Code, 28 U.S.C. §1746, declares as follows:

I am one of the South Carolina-based Boeing employees seeking to intervene in this case.

I reside in Summerville, SC. I am currently employed by Boeing in North Charleston, SC.

Along with my family, I have lived in South Carolina since 1981. I moved to South Carolina in 1981 when it was made my Air Force permanent duty station. I served in the Air Force for a total 8 years, and was honorably discharged in 1984.

I went to work for Lockheed in 1984 in Charleston, SC. I was employed within a bargaining unit represented by the International Association of Machinists & Aerospace

Workers ("IAM"). I was a voluntary member of the IAM for most of the time I worked there.

Eventually Lockheed ran out of contracts and I was laid off. Later, Lockheed merged with Martin-Marietta, and the jobs in Charleston were moved to the Baltimore, MD area. I remained in Charleston and did not relocate to Baltimore.

I then worked for Bayer for about nine years, in the greater Charleston area. There was no union in that facility. I got laid off by Bayer when they downsized and sold off the facility, and I moved on to other jobs.

In 2008, I became employed by Vought, a manufacturer with a Charleston facility that assembled two aft sections of large Boeing aircraft. In approximately July, 2009, Boeing bought the Vought facility where I worked, and I have been a Boeing employee since that time.

When I went to work at Vought in 2008, the IAM had been voted in as the employees' exclusive bargaining representative, but they were just negotiating a first contract. In November 2008, an IAM representative called an emergency meeting but only told twelve of the 200 union members in the unit about the meeting. A total of thirteen employees attended the meeting and those few in attendance ratified the IAM's contract by vote of 12-1. Many of the provisions of the new IAM contract were worse than what Vought employees already had without a contract. For example, employees lost medical, dental, and short term disability. The Vought employees were then extremely unhappy with the IAM's actions. This unhappiness was exacerbated by

subsequent layoffs that lasted from three weeks to five months. Employees contacted IAM leaders to seek redress for the way that the contract had been ratified, but the IAM leadership turned down our requests to intervene and refused to assist us. I also contacted the NLRB and was told that this was not an unfair labor practice because the NLRB does not police internal union ratification votes.

Employees then collected more than 30% of signatures to decertify the IAM, but were told by the NLRB that we could not decertify until the contract expired, and we would have to wait until a 60-90 day period prior to the expiration of the contract.

In May 2009, we heard rumors that Boeing was going to buy out the facility from Vought, and we started collecting new decertification signatures. On July 30, 2009 when it was formally announced that we were no longer employees of Vought but were now employed by Boeing, we filed a decertification petition with the NLRB. The case was docketed as *The Boeing Company/IAM*, NLRB Case No. 11-RD-723. I was the named decertification petitioner in that case. After Boeing bought Vought's facility, it continued to recognize the union as our representative, but employees wanted to get out of the union nevertheless. Boeing was not hostile to the IAM in any way and did not encourage us to decertify. We filed the decertification petition entirely on our own.

Besides our lack of support for the IAM, it soon became clear to many employees that there was another good reason to decertify the union. In 2009, during all of this maelstrom and the decertification campaign, the media was reporting that Boeing was in the middle of a site election process to decide where it should create a new final assembly

and delivery line for the production of large aircraft. It was reported that Boeing was looking at several sites all over the country, including Charleston. Many employees knew about Boeing's site selection process, and discussed the fact that a decertification of the IAM would make our facility in Charleston all the more attractive to Boeing, since it was common knowledge that the IAM had caused major labor problems for the company in Seattle.

Thus, many employees who wanted to decertify the IAM because of the contract ratification fiasco also realized that our facility in Charleston would be in a much better competitive position to attract the Boeing final assembly and delivery work if we were operating non-union, without the IAM's rules and labor strife. The decertification election was held on September 10, 2009, and the IAM was voted out by a tally of 199-69. Boeing announced that Charleston was selected as the site for the new final assembly and delivery site about two months later.

Now that we are working in a nonunion setting, I feel that Boeing is treating employees well. Within a few weeks after the decertification was final, Boeing gave us 3% across-the-board raises. Overall, the wages, wage structure and benefits are better under the current non-union Boeing than under the prior unionized Vought. Most employees in my building are happy.

The Boeing Campus in North Charleston, SC is divided into three production buildings. The former Vought facility is now identified as Building 88-19. It is the Aft-Body Manufacturing building where Sections 47 and 48 are made. Here the two sections

are made from scratch, and then completed by the addition of all structural members and systems components. The sections are then joined together, making the rear third of the aircraft. Next is the former Global Facility, now known as Building 88-20. This is Mid-Body Assembly Facility where the mid-body sections are flown in from Italy and mated with the center wing section brought in from Japan. Once all the sections are joined and mated with the center wing section, the remainder of the systems components and wiring are installed completing the center third of the aircraft.

Last , there is the Final Assembly and Delivery Building, also known as FA&D. This is where the forward third of the aircraft is brought in from Spirit Aircraft in Kansas, the Mid-Body brought in from Building 88-20, the Aft-Body section from Building 88-19 as well as the wings from Japan and Horizontal stabilizer from Italy. All the sections are then combined to create a complete 787 Dreamliner aircraft. The interiors will come from the IRC facility being completed a few miles away, and also be installed at FA&D. After a quick flight for a high quality customer paint job, the aircraft return to the Charleston delivery center where the customers will take possession of their new airliner.

Building 88-19 is currently staffed by about 1200 employees. Building 88-20 is currently staffed by about the same amount. FA&D currently has somewhere in the range of 800 to 1000 employees with 10 classes going around the clock with several hundred more employees preparing to work in the FA&D building. When it is fully staffed, FA&D will employee some 3800 employees.

Although I still work in the "old" section of the building working on the aft sections of the aircraft, it is possible that I could transfer over to the new facility.

I understand that the NLRB General Counsel seeks a remedy in this case that would force Boeing to discontinue the final assembly and delivery work in Charleston, and transfer it to Seattle. This remedy is grossly unfair and would devastate our community and my family. As noted above, I have been laid off several times in my career due to corporate re-structuring or lack of work, and it is a devastating experience.

It seems clear that many Charleston-based employees and I would lose our jobs with Boeing in South Carolina if the General Counsel's proposed remedy is adopted. The current unemployment rate here is high and jobs are scarce. If I lose my job, my family will be devastated, as my son and daughter are both looking for work but are currently unemployed due to the high unemployment rate in this geographic area. Thanks to Boeing I am able to keep food on the table and a roof over my head for all of my family, including my grandchildren too. Many other families around here are in a similar boat.

Moreover, even if Boeing gave me the opportunity to move to Washington to perform the work that the General Counsel seeks to transfer to that state, I would oppose and decline such a move because I have already gone head-to-head with the IAM union and do not want to work in a unionized IAM environment in Washington, especially in light of what they have done to us here in Charleston.

In January 2009 Vought sent me to Boeing's Everett, Washington facility for training purposes. When I told those rank and file IAM members how we had been

mistreated by the IAM, the rank and file workers voiced support for us. But of course the union officials were against our efforts to re-do the contract ratification and our efforts to decertify the IAM. One union official went on the public record and said that he would try to keep work from coming to our plant in Charleston because of the decertification. I would not want to work in such a hostile unionized environment, nor do I believe that I should have to in order to earn a living and feed my family.

I have chosen to exercise my rights as a citizen of the United States to live and work in South Carolina. I have chosen to exercise the rights provided to me under the state and federal laws that prohibit compulsory unionism, and allow employees to refrain from joining or supporting any labor union. I served in the military to uphold every citizen's basic constitutional rights, which includes the right not to be compelled to join or support any private organization. Moreover, along with a large majority of my co-workers, I have already chosen to exercise my rights under the NLRA to decertify the IAM when it was our representative at the same facility. I have nothing against unions, but I do not think they should be compulsory. I do not think employers should be told by the federal government where they can establish their operations.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 25, 2011.

Dennis Murray

Declaration of Meredith Going, Sr.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19

THE BOEING COMPANY,
Respondent,

Case No. 19-CA-32431

and

IAM DISTRICT LODGE 751,
Charging Party.

DECLARATION OF MEREDITH GOING, SR.
IN SUPPORT OF MOTION TO INTERVENE

Meredith Going, Sr., pursuant to Section 1746 of the Judicial Code, 28 U.S.C. §1746, declares as follows:

I am one of the South Carolina-based Boeing employees seeking to intervene in this case.

I reside in North Charleston, SC, and I am currently employed by Boeing in North Charleston, SC.

I am 65 years old. I was born in Charleston, SC, and I have lived in this area for virtually my entire life. I have lived in the same house for 26 years.

I previously worked for Lockheed-Georgia ("Lockheed") in Charleston, SC from Sept. 1965 until sometime in 1970. When I went to work at Lockheed there was no union. I helped organize for the Machinists union ("IAM"), and the employees voted in

the union. Once the union was voted in, I was a voluntary member of the IAM.

I left the aerospace field for many years, but then was hired by Boeing to work at its North Charleston aircraft assembly operations on July 16, 2010.

At this time I am happily working for Boeing in a nonunion setting. I feel that Boeing realizes the value of well-trained employees who are happy with their pay and benefits, and realizes that in order to keep people satisfied with their employment here in Charleston they are going to have to pay employees commensurate with their level of experience. Boeing is treating employees well, and the wages, wage structure and benefits are competitive. Most employees in my building are very happy to be working for Boeing, and I know many people who would like to work here if they could.

When I was hired, I was trained through the State of South Carolina technical training program, as part of an agreement that the State has with Boeing to entice them to come here. I went through a rigorous screening and hiring program, then I was assigned to the training program. Once I completed 8 weeks of training, I was given an assignment in the plant based on what Boeing needed to be done at that time. I am currently working in the mid-body plant, where we join the barrel sections of the aircraft. This is where the "join" is initially done on three main sections of the aircraft. We do the "drilling and filling" work, and then the different systems (e.g., hydraulics, passenger components, etc.) are added farther down the production line. My building never had a union in it, and it was not part of the decertification of the IAM that occurred in another building in 2009.

Although I am now working in the mid-body plant, I am assigned to the new final assembly and delivery ("FAD") part of the operation. Once production begins there in approximately June or July, 2011, I expect to move to that part of the operation. Boeing is trying to get experienced people to work at FAD. They are picking people to be pulled from the other departments to go into FAD based on their prior work experience. They have probably taken about a hundred people so far for FAD, who are already working at Boeing in Buildings 88-19 or 88-20.

I understand that the NLRB General Counsel seeks a remedy in this case that would force Boeing to discontinue the FAD work in Charleston, and transfer it to Seattle. This remedy is grossly unfair and would devastate our community and my family.

It seems clear that many Charleston-based employees and I would lose our jobs with Boeing in South Carolina if the General Counsel's proposed remedy is adopted. The current unemployment rate here is high and jobs are scarce. Many people I know would like to work at Boeing if they could. I am 65 years old, and was unemployed for over a year before I got this job with Boeing. Before coming to Boeing, I was laid off from my previous job in the automobile finance business. If I lose my job with Boeing, I'd have to go back on unemployment. Because of the economic downturn I was already forced to draw social security earlier than I would have liked. My wife is also drawing social security disability, and is older than me and cannot work. I am sure that any unemployment I would receive would run out quickly, and at my age getting a good job

with good wages and benefits like what I have here with Boeing is extremely difficult. Many other families in this area face similar economic hardships.

Even if Boeing gave me the opportunity to move to Washington to perform the work that the General Counsel seeks to transfer to that state, I would oppose and decline such a move because I have lived here all my life and I have been in my current house for over 26 years. In fact, because of my layoff and economic situation I had to take out a reverse mortgage on my house, and would lose my house if I had to move out and relocate to Washington. There, I would be forced to rent or lease adding to the economic difficulties my wife and I would face.

Moreover, I would not want to work in such a unionized environment where compulsory union dues are required, nor do I believe that I should have to in order to earn a living and feed my family. Having once helped organize an IAM union, I have seen what happens in a unionized environment, and I would not want to work in such a place, where the union treats everything as an adversarial relationship with the employer. When I helped organize the union at Lockheed earlier in my career, I was young and naive about unions, but I am neither young or naive any longer. There are people who are currently organizing for the IAM here in Charleston, but I want nothing to do with another chapter of the IAM or any other union.

I have chosen to exercise my rights as a citizen of the United States to live and work in South Carolina. I have chosen to exercise the rights provided to me under the

state and federal laws that prohibit compulsory unionism. I believe that employees should be allowed to refrain from joining or supporting any labor union. I have nothing against unions in general, but I do not believe that they should be compulsory. I do not believe that employers should be told by the federal government where they can establish their operations.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 20, 2011.

Meredith E. Going Sr.

Meredith Going, Sr.

Declaration of Cynthia Ramaker

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19

THE BOEING COMPANY,
Respondent,

Case No. 19-CA-32431

and

IAM DISTRICT LODGE 751,
Charging Party.

DECLARATION OF CYNTHIA RAMAKER
IN SUPPORT OF MOTION TO INTERVENE

Cynthia Ramaker, pursuant to Section 1746 of the Judicial Code, 28 U.S.C. §1746, declares as follows:

I am one of the South Carolina-based Boeing employees seeking to intervene in this case.

I reside in Ladson, SC. I am currently employed by Boeing in North Charleston, SC. I have lived in South Carolina since 1975. My family also lives in South Carolina. I moved to South Carolina from New Jersey when my father was transferred by the Air Force.

I was a police officer in Charleston County Police Department until 1989. I then worked for Daimler-Chrysler until about 2005. In 2006 I was in the first in group to be hired by Vought Aircraft, a manufacturer with a Charleston facility that assembled two aft sections of large Boeing aircraft. I was a voluntary member of the IAM from the time the union first got in until it was decertified. I was a Vought employee until approximately July, 2009, when Boeing bought the Vought facility. Since then I have been a Boeing employee.

When I went to work at Vought in 2006, the IAM had not yet made any contact with employees. The IAM was interested but there were only 25 or so employees. In 2007 IAM organizers began soliciting Vought employees, with a door-to-door campaign. The union was eventually voted in the spring of 2008.

In 2009 I became President of IAM Local Lodge 787. I was President during the time the IAM was negotiating the first contract with Vought. I did not have a role in the negotiations. The IAM did not inform employees concerning the importance of issues being negotiated with Vought. In general there was not much communication between the IAM and the employees. The IAM must have known that the contract it was negotiating was likely to be rejected because, the meeting at which the contract was ratified was billed as a normal union meeting. The IAM knew that if it said a contract was being voted on workers would show up at the meeting and reject the contract. The IAM was desperate to get a contract signed. I recall the IAM assuring employees that any bad things in the contract would later be improved. I, myself, made similar arguments to employees in an attempt to convince them that no matter what was in the contract, we would be stronger with it than without it.

Of the 200 union members in the unit only 13 attended the contract ratification meeting. Those few in attendance ratified the IAM's contract by vote of 12-1. Many of the provisions of the new IAM contract were worse than what Vought employees already had without a contract. The IAM upper leadership itself did not monitor the Vought negotiations. Employees lost medical, dental, and short term disability. Additionally, dues were set to increase, although this requirement was later reduced due to the strong backlash in the unit.

As Local President, I got to see what was going on behind the scenes with the union. The

experience was embarrassing and humiliating. I believe I was at that time the only IAM woman local president, and I believe this made my dealings with IAM leadership in Seattle even more difficult. On various occasions, Union leadership in Seattle made public very negative, humiliating comments concerning the South Carolina unit and South Carolina workers, generally. These comments appeared in the newspaper in Seattle, Charleston and even in a Florida newspaper.

The IAM gave myself, as well as others, the impression that they all backed each other up. It was a brotherhood. We never received any support at all from any other IAM Local. It was completely opposite. The IAM in Washington, (Seattle), went out of its way to make us look totally incompetent of building anything, let alone the 787.

I am not surprised by the Unfair Labor Practice filed by the IAM in Seattle/Everett against Boeing. They are violating my right to work with a choice. Isn't that what being an American is all about? That is MY right! Being a union member or not did not matter at all to the IAM in Everett/Seattle. They made it perfectly clear that they did not want the 787 built here in South Carolina.

The Vought employees dissatisfaction with the IAM's actions surrounding the contract and the contract, itself, only increased when workers were laid off in the weeks following the new contract.

After the contract ratification employees attempted to contact IAM leaders concerning the contract. The IAM Grand Lodge representatitves held one meeting and then we had no contact from the IAM Leadership for four months. Nobody was even able to contact union leadership for about the next four months. IAM came back into the picture in about March or April 2010. I

continued as Local President until about September 2009, when the union was decertified. There was nothing I could do with respect to influencing union leadership or reassuring employees about our future under the new contract and with the union. I tried to promote a positive attitude towards the union despite the enormous dissatisfaction in the plant.

Soon after Boeing took over, we had an initial meeting between the union leadership and Boeing executives. That meeting left me with the impression the relationship between Boeing and the union was going to be a successful one and that Boeing was keen to begin negotiations on a new contract which could improve on the previous one that employees were so unhappy about.

I had no role in the signature gathering for the decertification petition. During my time as Local President, I was aware that other employees began collecting the necessary signatures to decertify the IAM.

During the months leading up to the decertification, I was concerned about how I would be treated if the union was decertified, both by the company and my fellow employees. I expected to face retaliation from the company after my role as union president. I was completely wrong about this. Before the decertification election, one of my supervisors told me that whatever the result was, all he cared about was that we do our jobs, and that my role as union president would not affect how I was treated by the company at all. He also told me to inform him if any employee mistreated me.

The decertification election was held on September 10, 2009, and the IAM was voted out by a tally of 199-69. After the decertification of the IAM, work continued as normal. In the only communication on the subject that I recall coming from Boeing, the company thanked employees

for "giving the company the chance to work together." With respect to pay and terms of work, we were placed within the normal Boeing cycle. A safety bonus was given about 6 months after the decertification.

Recently, the union has again made contact with employees through home visits. The campaign was very poor in comparison to the first one several years ago.

The Boeing Campus in North Charleston, SC is divided into three production buildings. The former Vought facility is now identified as Building 88-19. It is the Aft-Body Manufacturing building where Sections 47 and 48 are made.

Next is the former Global Facility, now known as Building 88-20. This is Mid-Body Assembly Facility where the mid-body sections are flown in from Italy and mated with the center wing section brought in from Japan. Once all the sections are joined and mated with the center wing section, the remainder of the systems components and wiring are installed completing the center third of the aircraft.

The newest facility is the Final Assembly and Delivery Building, also known as FA&D. This is where the forward third of the aircraft is brought in from Spirit Aircraft in Kansas, the Mid-Body brought in from Building 88-20, the Aft-Body section from Building 88-19 as well as the wings from Japan and Horizontal stabilizer from Italy. All the sections are then combined to create a complete 787 Dreamliner aircraft. The interiors will come from the IRC facility being completed a few miles away, and also be installed at FA&D.

Building 88-19 is currently staffed by about 1200 employees. Building 88-20 is currently staffed by about the same amount. FA&D currently has somewhere in the range of 800 to 1000 employees with 10 classes going around the clock with several hundred more employees

preparing to work in the FA&D building. When it is fully staffed, FA&D will employee some 3800 employees.

I work in a building usually called "off-site warehouse" where the 787 parts are received. I am a quality inspector. I inspect the incoming parts before they are issued to production. I also inspect and ship parts to Everett. It is my responsibility to resolve any issues with the parts before they go to the program.

I will definitely be unemployed if the NLRB complaint is successful. All of my work is for the 787. Losing my job at Boeing will be personally catastrophic to myself and the workers at the North Charleston Boeing facility. I own my home, and support my mother who is 78 and in poor health. I understand that the NLRB General Counsel's remedy in this case will force Boeing to discontinue the final assembly and delivery work in Charleston, and transfer it to Seattle. This remedy is grossly unfair and would devastate our community and thousands of families.

It is an absolute certainty that many Charleston-based employees including me, will lose our jobs with Boeing in South Carolina if the General Counsel's proposed remedy is adopted. Boeing is one of the best employers in this area. I would like to continue working for Boeing, but if the 787 program is moved to Washington I will not be able to accept a relocation offer. Apart from my family and personal obligations, I would not accept an offer which would force me to join a union in order to have a job. Here, at least people have a choice. There, they have none. We should not be penalized for not wanting a union. The union doesn't want the program here, period. There was zero support from the IAM in Everett for the South Carolina workers even when we had a union.

One union official went on the public record and said that he would try to keep work from

coming to our plant in Charleston because of the decertification. There were numerous negative comments made by union leaders in Seattle about South Carolina, the education of the workers here, and how it would be impossible for us to successfully build the Dreamliner.

I have chosen to exercise my rights as a citizen of the United States to live and work in South Carolina. My personal experience with the IAM has been very bad. Although I have nothing against unions, in principle, I strongly believe that membership in a union and representation by a union should not be compulsory. We had a union in our plant. The majority of employees did not want to be represented by that union so it got voted out. Now it seems we are being punished for that choice. I strongly believe that employers should not be told by the federal government or a union where they can establish their operations. If Boeing thinks it can get the job done more profitably and successfully in South Carolina, that's Boeing's decision to make.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June __1st__, 2011.

_____\s_____

Cynthia Ramaker

EXHIBIT B

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

THE BOEING COMPANY'S RESPONSE TO THE MOTION TO INTERVENE OF DENNIS MURRAY, CYNTHIA RAMAKER, AND MEREDITH GOING

Respondent The Boeing Company ("Boeing") hereby responds to Judge Anderson's June 3, 2011 Order providing the current parties with "an opportunity to submit positions" regarding the Motion to Intervene filed by Dennis Murray, Cynthia Ramaker, and Meredith Going ("Intervenors"), who are employees of Boeing in its facilities in Charleston, South Carolina. Boeing supports the intervention and submits that the motion should be granted because Intervenors have a direct interest in the outcome of this case.

Under the governing regulations, an Administrative Law Judge may grant a motion to intervene "to such extent and upon such terms as he may deem proper," 29 C.F.R. § 102.29, upon due consideration of the importance of "giv[ing] all interested parties opportunity for . . . submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit." 5 U.S.C. § 554(c); *Camay*

Drilling Co., 239 N.L.R.B. 997, 998 (1978) (quoting the language of § 552(c) to allow the trustees of the charging party's pension fund to intervene in a case concerning the employer's payment of increased wages into said fund); *see also* NLRB Casehandling Manual § 10388.1 (Dec. 2009) (Counsel for the General Counsel should "not oppose intervention by parties or interested persons with direct interest in the outcome of the proceeding."). In that regard, Section 7 of the National Labor Relations Act protects the interests of non-union employees, as well as union employees, to engage in "concerted activities for the purpose of . . . mutual aid or protection." 29 U.S.C. § 157.

The Intervenors have important interests at stake that warrant their participation in the case, particularly given the extraordinary (and unprecedented) remedy sought by the Acting General Counsel in this case—an order requiring Boeing to "operate its second line of 787 Dreamliner aircraft assembly production in the State of Washington," instead of its current location in Charleston, South Carolina, "utilizing supply lines maintained by the [Charging Party's bargaining unit]," instead of supply lines operated in part in South Carolina. Compl. ¶ 13(a). As the Charleston final assembly facility was designed and constructed to assemble the 787 Dreamliner, the Acting General Counsel's efforts to force this work to be done in Puget Sound would result in the cessation of operations in that facility. Therefore, the mere filing of this complaint casts a cloud of uncertainty not only over The Boeing Company, but over the lives and futures of thousands of employees currently working for Boeing in South Carolina—including the more than one thousand who have been specifically trained to assemble 787s there. Given the risk to employment that this complaint poses to intervenors, it is clear that they are "interested parties" having a "direct interest in the outcome of the proceeding." 5 U.S.C. § 554(c); Casehandling Manual § 10388.1.

Further, the Motion to Intervene itself is a form of "concerted activity" for "mutual aid or protection" which is protected by Section 7. The protections of the NRLA extend to unrepresented employees as well as represented employees, and include the right to choose not to be represented by a labor organization. *Chamber of Commerce of the United States v. Brown*, 554 U.S. 60, 67 (2008). The Acting General Counsel, though obligated to represent the interests of represented and unrepresented workers, has sought only to serve the IAM's interests and has failed to take into account or mitigate in any way the severe consequences his complaint and requested remedy would have for the workers in South Carolina. The Intervenors' participation will ensure that unrepresented employees in South Carolina, who will be greatly affected by the Acting General Counsel's proposed remedy, are afforded the opportunity to directly express their interests in this case.

Finally, the Intervenors may be able to provide information regarding the impact that the complaint and the requested remedy have had and will have on the public interest, especially the interests of citizens of South Carolina, which also is a factor in deciding whether to grant the relief the Acting General Counsel seeks. *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)).

Boeing is mindful that proceedings in this case are expected to be lengthy and that, accordingly, it may be appropriate to place reasonable limitations on the time allocated to Intervenors to present their case. Boeing also reserves the right to object to particular evidence offered by Intervenors on the basis of relevance and other grounds, including evidence identified in Intervenors' Motion. However, Intervenors plainly have important interests that merit their

participation, and for all of the reasons set forth above, Respondent submits that the Motion to Intervene should be granted.

Respectfully Submitted,

Dated: June 7, 2011

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

CERTIFICATE OF SERVICE

I certify that a copy of Respondent's Response to the Motion to Intervene was electronically served on June 7, 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 7th day of June, 2011

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EXHIBIT C

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

ACTING GENERAL COUNSEL'S OPPOSITION TO MOTION TO INTERVENE BY DENNIS MURRAY, CYNTHIA RAMAKER, AND MEREDITH GOING, SR.

Counsel for the Acting General Counsel opposes the Motion to Intervene ("Motion") filed by Dennis Murray, Cynthia Ramaker, and Meredith Going, Sr. ("Movants") on June 1, 2011. Movants are employed by Respondent The Boeing Company ("Respondent") in North Charleston, South Carolina, and essentially argue that, as such, they are entitled to status as intervenors or, in the alternative, *amici curiae*, in this proceeding. More specifically, Movants argue that they should be allowed to intervene because of the possibility that they will be adversely affected by the outcome of the proceeding.

As set forth below, Movants' interests are already adequately represented by the parties and they, in fact, have no cognizable interest in participating in this proceeding sufficient to justify their intervention. Thus, their unnecessary participation as three additional parties would merely delay and complicate these already complex proceedings. In the interest of a just and speedy resolution of this dispute, intervention

should be denied. The Acting General Counsel believes that, just as Movants do not have an interest that warrants intervention, they also lack a sufficient interest to be accorded *amicus* status. Nevertheless, the Acting General Counsel does not object to their *amicus* status for the sole purpose of filing post-hearing briefs on their own behalf.

I. BACKGROUND

The Complaint in this case alleges, among other things, that Respondent violated Sections 8(a)(1) and (3) of the National Labor Relations Act (the "Act") by deciding to transfer its second 787 Dreamliner production line and an associated sourcing supply program from a bargaining unit represented by Charging Party International Associations of Machinists and Aerospace Workers, District Lodge 751, affiliated with International Associations of Machinists and Aerospace Workers ("Charging Party" or the "Union") to its non-union site in North Charleston, South Carolina. (Complaint ¶¶ 7, 8 & 10)

Part of the remedy pled in the Complaint is an order requiring Respondent to employ bargaining-unit employees to operate its second 787 production line in the State of Washington, and to utilize supply chains operated by union-represented employees at Respondent's Seattle, Washington, and Portland, Oregon, area facilities. (Complaint, ¶ 13(a)) The Complaint specifies that the Acting General Counsel does *not* seek to prohibit Respondent from making non-discriminatory decisions with respect to where work will be performed, including non-discriminatory decisions with respect to work at its North Charleston facility. (Complaint ¶ 13(b))

Respondent has denied that it violated Sections 8(a)(1) and (3) as alleged. (Answer ¶¶ 7, 8, & 10) Respondent also asserts that the requested remedy "is

impermissibly punitive and would cause an undue hardship on [Respondent], its employees, and the State of South Carolina." (Answer, Affirmative Defense 8) In response to the portion of the Complaint specifying that the Acting General Counsel does not seek to prohibit Respondent from making non-discriminatory decisions with respect to where work will be performed, Respondent states that it "denies that the Acting General Counsel has correctly stated that the remedy sought... will not effectively cause [its] assembly facility in North Charleston to shut down." (Answer ¶ 13(b))

II. THE MOTION TO INTERVENE

The Movants seek to intervene to oppose both the substantive allegations and the requested remedy discussed above. (Motion to Intervene at 1) According to the unsworn declarations attached to the Motion (two of which appear to be unsigned), Movants are current employees of Respondent. Two of the Movants, Dennis Murray and Cindy Ramaker, have been employed by Respondent since it purchased a North Charleston fuselage production facility from Vought Aircraft Industries ("Vought") around July 2009. (Murray Declaration at 2; Ramaker Declaration at 1) The employees at that facility voted to decertify the International Association of Machinists and Aerospace Workers (the "IAMAW") as their collective bargaining representative in September 2009, shortly before Respondent's October 2009 announcement of its decision to place the second 787 production line in North Charleston. (Murray Declaration at 4; Ramaker Declaration at 4)

It appears that neither Murray nor Ramaker has been assigned to work on the second 787 production line. (Murray Declaration at 6; Ramaker Declaration at 6) The

third Movant, Meredith Going, Sr., has apparently been hired to work on the second 787 production line, and is currently performing work at Respondent's separate mid-body plant in North Charleston. (Going Declaration at 2-3) The North Charleston facility is still under construction and has not yet commenced operations. (Going Declaration at 3; Murray Declaration at 5; Ramaker Declaration at 6)

In essence, Movants claim to have an interest in these proceedings based on their belief that they will likely be discharged by Respondent if the remedy requested by the Acting General Counsel is granted. Movants also assert that, were such a remedy granted and were Respondent subsequently to offer them employment in the State of Washington or Oregon, their right to choose not to be represented by the IAMAW and to live in the State of South Carolina (as a state that does not permit agreements requiring membership in labor organizations), would be jeopardized. (Motion to Intervene at 3-7) Movants advance these assertions even though the remedy sought by the Acting General Counsel does not require Respondent to shut down any operations in South Carolina, does not require Respondent to transfer any of its South Carolina employees to bargaining unit positions in Washington or Oregon, and does not require any of Respondent's South Carolina employees to be represented by the Union.

Movants state that they wish to introduce evidence concerning the following subjects: (a) their experience with Respondent as employees represented by the IAMAW at the former Vought facility; (b) their reasons for decertifying the IAMAW as their collective-bargaining representative at that facility (including their belief that decertification would make North Charleston a more attractive location for Respondent's second 787 production line); and (c) "their legally protected choice to work at a non-

union factory in South Carolina and to remain working at that factory and have it remain non-union without interference from the NLRB Acting General Counsel." (Motion to Intervene at 12)

III. MOVANTS SHOULD NOT BE PERMITTED TO INTERVENE

A. The Legal Standard

Under Section 10(b) of the Act, Board proceedings need not be limited to necessary parties, and the Board has discretion to decide whether to permit "any other person . . . to intervene." 29 U.S.C. § 160(b). Under Board regulations, a person seeking intervention must "state[] the grounds upon which [he or she] claims an interest" in intervening. 29 C.F.R. § 102.29. It is the Federal Rules of Civil Procedure that apply in determining the appropriateness of intervention in Board proceedings. 29 U.S.C. § 160(b) ("Any such proceeding shall, so far as practicable, be conducted in accordance with . . . the rules of civil procedure for the district courts of the United States . . . ."). Rule 24 of the Federal Rules of Civil Procedure provides for two types of intervention: intervention as of right and permissive intervention.

To meet the requirements for intervention as of right, a movant must hold a legally protected interest and must have some relationship to the claims at issue in the proceeding. *Donnelly v. Glickman*, 159 F.3d at 409. It is well settled that employees do not have any protectable interest in positions they may have obtained due to unlawful employment decisions. *Id.* at 411, *citing Dilks v. Aloha Airlines, Inc.*, 642 F.2d 1155, 1157 (9th Cir. 1981). Indeed, employees *qua* employees are not entitled to intervene as of right.[1] "The courts have uniformly held that . . . [such] employees are not necessary

[1] In countless Board cases involving claims of unlawful discrimination, such as claims of discriminatory discharges, layoffs, refusals to hire, transfers, and demotions, the remedy requires the displacement, if

parties." *Semi-Steel Casting Co. of St. Louis v. NLRB*, 160 F.2d 388, 393 (8th Cir. 1947). *See also NLRB v. Todd Co.*, 173 F.2d 705, 707 (2d Cir. 1949); *Oughton v. NLRB*, 118 F.2d 486, 495-96 (1st Cir. 1941) (*en banc*); Fed. R. Civ. P. 24(a)(2). *Cf. NLRB v. Pennsylvania Greyhound Lines*, 303 U.S. 261, 271 (1938) ("[Third party's] presence was not necessary in order to enable the Board to determine whether respondents had violated the statute or to make an appropriate order against [respondents]"). Further, movants cannot be authorized to intervene to represent the interests of other employees unless they provide "evidence that [other] employees requested or authorized [the intervenor] to represent [the other employees'] interests." *Washington Gas Light Co.*, 302 NLRB 425, n.1 (1991).

Where the movant has no right to intervention, a judge has the discretion to grant permissive intervention where the movant "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b). In assessing whether to grant permissive intervention, the judge may consider a variety of factors, including:

> the nature and extent of the intervenors' interest, their standing to raise relevant legal issues, ...whether the intervenors' interests are adequately represented by other parties, ...and whether the parties seeking intervention will significantly contribute the full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.

Spangler v. Pasadena City Bd. of Ed., 552 F.2d 1326, 1329 (9th Cir. 1977) (footnotes omitted). There is a presumption of adequacy of representation when the movant has

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necessary, of individuals holding the positions to which the discriminatees must be instated or reinstated. A rule permitting employees to intervene in unfair labor practice proceedings based on their possibility that they may be displaced as part of the remedy would invite intervention by employees who were not necessarily involved in the events surrounding an alleged unfair labor practice in a vast number of Board cases.

the same ultimate objective as an existing party. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1305 (9th Cir. 1997). Finally, the federal rules specifically require that, "[i]n exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

In Board proceedings, where employees seek to intervene for the purpose of establishing the same defense advanced by their employer, and where they have made no showing that they can adduce evidence other than that offered by the employer, they are not entitled to intervene. *Todd Co.*, 173 F.2d at 707; *Semi-Steel Casting Co. of St. Louis*, 160 F.2d at 393 (upholding decision to deny petition by employees opposing a union to intervene in unfair labor practice proceedings concerning their employer's refusal to bargain with the union); *Oughten*, 118 F.2d at 495-96 (upholding decision to deny petition of 75 percent of unit employees to intervene in unfair labor practice proceeding involving allegations that their elected union lost majority support as a result of their employer's unfair labor practices).

B. Movants Are Not Entitled to Intervene as of Right Because They Do Not Have Any Legally Protected Interest in This Proceeding

Here, to the extent that Movants assert they have an interest in this proceeding based on their belief that the remedy sought by the Acting General Counsel will cause their discharges, such speculation simply does not justify their intervention. Movants' asserted belief that they will be discharged lacks foundation, as nothing in the Complaint requires Respondent to shut down any of its operations in South Carolina. As a preliminary matter, two of the three Movants have been not even been assigned to work on the second 787 production line at issue in this case, and they have not

advanced any factual basis for believing that the remedy sought by the Acting General Counsel will affect their positions in the facilities where they work. Further, it is noted that, although Movants claim to represent the interests of all of Respondent's employees in North Charleston, South Carolina, there is no basis for them to be authorized to do so. *See Washington Gas Light Co.*, 302 NLRB 425, n.1.

Moreover, any employee, including any of the Movants, who starts working on the second 787 production line and the associated sourcing supply program once production commences in North Charleston, South Carolina, will have obtained their positions by virtue of the Employer's alleged unlawful employment decision. Therefore, any interest Movants may have in being placed in those prospective positions is insufficient to warrant their intervention. *See Donnelly*, 59 F.3d at 411; *Dilks*, 642 F.2d at 1157.

Movants assert that the remedy sought by the Acting General Counsel, in addition to causing their discharges, will interfere with their Section 7 right to elect not to be represented by a union as well as their right to live in the State of South Carolina, where they are not represented by a union. (Motion to Intervene at 12) These claims do not establish any cognizable interest in these proceedings, as the remedy sought by the Acting General Counsel plainly does not interfere with these rights.

C. Movants are Not Entitled to Permissive Intervention Because Their Asserted Interests are Adequately Represented by Respondent, any Relevant Evidence They Possess May be Offered by Them as Witnesses, and Their Participation Would Unduly Burden the Board's Processes

Movants state that they seek to intervene to oppose the Complaint and the requested remedy. (Motion to Intervene at 1) This is the exact same ultimate objective

as Respondent. Accordingly, it must be presumed that Movants' interests will be adequately represented. *See League of United Latin Am. Citizens*, 131 F.3d at 1305. While Movants suggest that their interests may diverge from the interests of Respondent, their arguments in this regard fall wide off the mark.

Specifically, Movants have stated that they wish to present evidence concerning the personal effects the pled remedy would have on "their legally protected choice to work at a non-union factory in South Carolina and to remain working at that factory and have it remain non-union without interference from the NLRB Acting General Counsel." (Motion to Intervene at 12) Precisely what evidence Movants intend to present concerning these personal effects is unclear; however, the Acting General Counsel respectfully submits that Movants are only in a position to speculate about what business decisions Respondent will make if the remedy sought by the Acting General Counsel is granted. As sheer speculation, their testimony in this regard would be irrelevant and inherently unreliable.

In any event, crafting an appropriate remedy for unlawful discrimination does not involve a balancing of the personal hardships that discriminatees will suffer as a result of the discrimination against the personal hardships the remedy may potentially cause to individuals who obtained their positions as a result of the unlawful discrimination. Indeed, the Board's practice is to order reinstatement of unlawfully terminated employees, even when their former position has been filled and it is necessary to displace the discriminatee's replacement. *See* Board's Casehandling Manual, Part Three, Compliance Proceedings, § 10530.2: "Reinstatement is not foreclosed because the position has been filled since the unlawful action or because a replacement

employee will have to be displaced in order to effectuate reinstatement." *See also Page Aircraft*, 123 NLRB 159, 179-80 (1959) (Board ordered reinstatement of striking employees and, as necessary, the displacement of other employees).

Finally, Movants assert that they possess relevant evidence and wish testify concerning their experience with Respondent as employees represented by the IAMAW at the former Vought facility as well as their reasons for decertifying the IAMAW as their collective-bargaining representative. (Motion to Intervene at 12) However, their participation as intervenors is not required in order to either meet these goals or develop a complete record. To the extent such evidence is relevant, the parties may call Movants or other individuals who worked at the plant at the time of the decertification to testify about any relevant facts. Thus, they need only appear as witnesses.

Because any relevant evidence Movants claim to possess will be adduced by either Counsel for the Acting General Counsel or Counsel for Respondent (which shares Movants' stated interest in this proceeding), intervention would serve only to unnecessarily delay and complicate these already complex proceedings. Granting Movants or other individuals intervenor status would complicate the course of this litigation as each one would be entitled, for example, to enter into stipulations, take interlocutory appeals, or be involved in (and a necessary party to) settlement discussions. Since Movants' interests are already represented by Respondent, the procedural burdens that would result from their participation as additional parties in this case render permissible intervention particularly inappropriate.

D. The Cases Cited By Movants in Support of Intervention Are Inapposite

Movants have cited a number of Board cases which they claim support the proposition that the Board has allowed employees to intervene in a variety of settings

"to protect their interests and help defend their employer." (Motion to Intervene at 11) However, those cases are considerably more limited – employees were permitted to intervene only to litigate issues bearing directly on their Section 7 rights, including their unions' majority status, unions' improper solicitation of authorization cards, and the propriety of their employer's refusal to withhold union dues. *See Washington Gas Light Co.*, 302 NLRB 425, n.1 (1991); *J.P. Stevens & Co.*, 179 NLRB 254, 255 (1969); *Sagamore Shirt Co.*, 153 NLRB 309, n.1 (1965); *Gary Steel Prods. Corp.*, 144 NLRB 1160, n.1, 1162 (1963). Those issues do not exist in this case.

Moreover, *International Ladies' Garment Workers Union v. NLRB*, 374 F.2d 295 (D.C. Cir. 1967), which Movants characterize as "[p]erhaps the most important and analogous case to consider," does not even involve a motion by employees to intervene in Board proceedings. *Id.* In that case, the Board ordered an employer to bargain with a union as the representative of its employees in Florida after the employer illegally moved its business from New York to Florida to avoid the union. *Id.* Movants claim that the court "bemoaned the fact that...employees did not intervene." (Motion to Intervene at 9) However, the court did not suggest that the Florida employees should have intervened, as Movants imply. Rather, the court found that the absence of the Florida employees in the proceedings did not necessarily mean that the bargaining order was appropriate, but rather begged the question of whether the Florida employees' Section 7 rights were being violated by the Board's imposition of the order. *Id.* at 300.

Further, the *International Ladies' Garment Workers Union* case is distinguishable because the remedy in that case would have affected the Florida employees Section 7 rights. Here, in contrast, the complaint does not seek any remedy impacting Movants'

Section 7 rights. The complaint does not seek a order requiring Respondent to bargain with the Union on their behalf, and it does not seek a requirement that Respondent transfer Movants, or any other employees, to bargaining-unit positions. Thus, Movants have not cited any case in which employees were permitted to intervene because of the possibility that, as part of the remedy, they might be displaced from positions they obtained as a result of an alleged unlawful employment decision.

Movants also cite cases in which benefit fund trustees and unions were permitted to intervene in Board proceedings. However, those cases also do not establish any basis for permitting intervention by employees who obtained their positions as a result of an allegedly unlawful employment decision. In *Camay Drilling Co.*, 239 NLRB 997 (1978), cited by Movants, benefit fund trustees moved to intervene in a case involving an employer's unilateral withholding of benefit contribution increases. *Id.* at 997. The Board found that the trustees should be permitted to intervene in view of rigorous fiduciary obligations requiring them to collect amounts due the funds, the lack of adequate protection of their position by any original party, and their unique possession of relevant evidence bearing on critical issues. *Id.* at 998. In *Valencia Baxt Express, Inc.*, 143 NLRB 211 (1963), a union that would lose its position as the employees' collective bargaining representative if a rival union prevailed in a withdrawal of recognition case was permitted to intervene. In *Harvey Aluminum*, 142 NLRB 1041, 1043 (1963), a union was permitted to intervene in a case involving the discharges of two employees for supporting the union. *Id.* at 1043-44, 1053. In *Frito Co. v. NLRB*, 330 F.2d 458 (9th Cir. 1964), an employer and a union that were parties in one case were permitted to intervene in another case, when their case was consolidated with the

other case by the court. *Id.* at 459. Thus, the cases involving intervention by benefit fund trustees and unions are also inapposite.

IV. ALTHOUGH MOVANTS LACK A SUFFICIENT INTEREST TO BE ACCORDED *AMICUS* STATUS, THE ACTING GENERAL COUNSEL DOES NOT OBJECT TO MOVANTS BEING GRANTED SUCH STATUS FOR THE SOLE PURPOSE OF FILING POST-HEARING BRIEFS

Even to have *amicus curiae* status, a movant must establish an adequate interest in the proceedings and desirability and relevance of their *amicus* brief to the proceedings. *Neonatology Assoc. v. Comm'r of Internal Revenue*, 293 F.3d 128, 131 (3d Cir. 2002). Thus, a judge should never "grant permission to file an amicus curiae brief that essentially merely duplicates the brief of one of the parties." *Nat'l Org. for Women v. Scheidler*, 223 F.3d 615, 617 (7th Cir. 2000). For the same reasons they do not have an interest warranting their intervention, Movants to not have an interest in this proceeding sufficient to warrant *amicus* status. Further, as discussed above, their interests and positions parallel those of Respondent. Although Movants do not meet the standards warranting *amicus* status, the Acting General Counsel does not object to Movants being granted *amicus* status for the limited purpose of filing post-hearing briefs on their own behalf.[2]

V. Conclusion

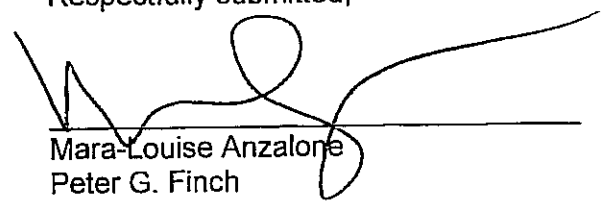
As explained above, Movants' intervention is inappropriate because their interest in maintaining any positions they may have obtained due to Respondent's unlawful employment decisions is not the type of interest that justifies intervention as of right in unfair labor practice proceedings, and their asserted interests in this matter coincide so

[2] As discussed above, although Movants claim to be authorized to speak "on behalf of" all of Respondent's employees in North Charleston, South Carolina, there is no basis for them to be authorized to do so. *See Washington Gas Light Co.*, 302 NLRB at 425, n.1.

closely with the interests of Respondent that they will be adequately represented without the need for permissive intervention and the attendant procedural burdens. The Acting General Counsel also posits that Movants lack a sufficient interest to be accorded *amicus* status, but does not object to their being granted status for the sole purpose of filing post-hearing briefs. The Acting General Counsel therefore respectfully urges the Administrative Law Judge to deny Movants' Motion to Intervene.

DATED at Seattle, Washington, this 7th day of June, 2011.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June 2011, I caused copies of Acting General Counsel's Opposition to Motion to Intervene by Dennis Murray, Cynthia Ramaker, and Meredith Going, Sr. be served upon the following parties:

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EXHIBIT D

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 INTERVENE

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 to Intervene brought by Dennis Murray, Cynthia Ramaker, and Meredith Going, Sr. (hereinafter "putative intervenors").

I. OVERVIEW AND LEGAL STANDARD

Putative intervenors oppose the remedy they mistakenly believe the Acting General Counsel is seeking in this case. They also wish to present evidence concerning their personal opposition to IAM representation at the Boeing facility in North Charleston, South Carolina. Neither issue is relevant, nor does either one establish a basis for intervention under Sec. 102.29, Rules and Regulations, or under NLRB precedent. Putative intervenors' passionate views on South Carolina laws prohibiting

union security clauses are an irrelevant diversion from the issues in this case and do not constitute grounds for intervention.

This case is about Boeing's retaliation against workers in the Puget Sound region who engaged in concerted and protected activity. The complaint asserts that the statements by Boeing executives demonstrate unmistakable anti-union animus in connection with the decision to transfer the second 787 Dreamliner production line out of the bargaining unit. The views of three South Carolina based employees about Respondent's actions are not relevant, and certainly do not establish a basis for intervention.

The current three parties already face formidable challenges with respect to subpoenas, witnesses, rights of appeal, and any settlement efforts. Permitting intervention here – especially where the organization brings its own ideological agenda – threatens to transform an already large and complicated hearing into an unmanageable and unwieldy proceeding. At the very most, putative intervenors should be granted leave to file an amicus brief addressing the specific legal issues the Administrative Law Judge will be considering, however the Motion to Intervene should be denied.

Whether or not to permit a party to intervene is subject to the discretion of the judge and will not be disturbed absent abuse or prejudice. *Auto Workers v. NLRB,* 392 F.2d 801, 809 (D.C. Cir. 1967), *cert. denied,* 392 U.S. 906 (1968); *Biles-Coleman Lumber Co.*, 4 NLRB 679, 682 (1937).

According to the NLRB Case Handling Manual, § 10388.1, "Counsel for the General Counsel should not oppose intervention by parties or interested persons with direct interest in the outcome of the proceeding. Sec. 102.29, Rules and Regulations and

Camay Drilling Co., 239 NLRB 997 (1978). Otherwise, counsel for the General Counsel should oppose such intervention." *Id.* (emphasis added).

Putative intervenors have no legally significant direct interest in this proceeding. According to their motion, the putative intervenors seek intervention to oppose the Acting General Counsel's proposed remedy, and to offer evidence concerning their opposition to IAM representation at the Boeing facility in North Charleston. These reasons fail on their face to establish a direct interest in the proceeding's outcome.

First, granting the motion to intervene as a party would cause unnecessary delay and complication in this case. Second, the harm alleged by putative intervenors is speculative and is based on an erroneous reading of the remedy sought in the complaint. Third, the harm, even if manifested, would be collateral to the Board's remedy and would not be the result of the direct legal operation and effect of the judgment. The Board's established policies do not support a right of intervention for such secondary parties.

II. ARGUMENT

A. Intervention Would Render An Already Complicated And Lengthy Hearing Into An Unwieldy And Unmanageable Proceeding

As the Motion to Intervene demonstrates, the putative intervenors seek to participate in order to argue issues that have nothing to do with this case. They have already demonstrated their confusion, by raising completely irrelevant issues in their Motion to Intervene, and mischaracterizing the remedy being sought by the Acting General Counsel. This case has nothing to do with the current representational status of workers in South Carolina; nor with South Carolina's status as a so-called "right to work"

state.[1] The case is about Respondent's retaliation against IAM represented employees in the state of Washington. Nonetheless, according to their Motion to Intervene, putative intervenors seek to litigate issues not relevant to this case. Tellingly, these issues reflect and help advance a well established independent political agenda. This proceeding should not be derailed in this manner.

Counsel for the putative intervenors are staff attorneys for the National Right To Work Legal Defense Foundation ("Foundation"), an independent organization opposed to labor unions, with an unwavering enmity toward lawful union security clauses. Courts have recognized the Foundation's "ideological hostility to unions" and political agenda. *Scheffer v. Civil Serv. Empls. Ass'n, Local 828*, No. 6:05-CV-06700, slip op. at 6-7 (Docket No. 38) (W.D.N.Y., 2006) (citing *Gilpin v. AFSCME*, 875 F.2d 1310, 1313 (7th Cir. 1989)), *aff'd* 610 F.3d 782 (2nd Cir. 2010), *cert. denied*, 131 S.Ct. 1480 (2011). "The Foundation's real objective is political notwithstanding its claimed objective of being a 'charitable public interest, legal aid organization.'" *Id.* at 7 (internal citation omitted).

> In fact, as the Foundation's president stated in a confidential internal memorandum produced in discovery 'I realize that, as a charitable entity, we are constrained to activities which can be defended as charitable. However, I believe our real aim is dedicated to "reducing union political influence over society." (citation omitted). The Foundation is dedicated to "reducing union political influence over society." (citation omitted).

Id. at 7. Particularly disturbing – and germane to this motion – is the court's finding that the Foundation readily makes use of the legal process to advance its political agenda, and to obstruct the operation of lawful union security clauses.

> The Foundation's manner of pursuing this objective is by triggering legal attacks that seek to impair the ability of unions to collect agency fees from

[1] Pursuant to NLRA Section 14(b), 29 U.S.C. § 164(b), so called "right to work" laws enable bargaining unit members to enjoy the benefits of a collective bargaining agreement and representation without having to pay any portion of union dues.

> nonmembers whom they represent in collective bargaining in what the Foundation describes as forced unionism.

Id. at 7-8 (internal citation omitted). In its fundraising literature the Foundation boasts "[n]o other national legal organization focuses exclusively on dismantling forced unionism – the engine that drives the far-left political machine." *Id.* at 8, n. 1.

The tone and emphasis of the Foundation's motion unmistakably reflects its core anti-union agenda, and demonstrates precisely what should be avoided here: distractions involving irrelevant and ideological issues not germane to this proceeding. The Foundation's motion portends the confusion and delay which would inevitably result if putative intervenors' were permitted to intervene as parties.

Permitting intervention would invite needless complication, delay and disruption into all aspects of these proceedings. The addition of a fourth party would undoubtedly compound the number of subpoenas and witnesses involved and complicate the presentation of evidence. But beyond the immediate prospect of rendering the trial unmanageable, the putative intervenors, working with the Foundation, would have full rights of appeal and ability to seek enforcement, throughout the life of this case. Likewise, they would have the ability to participate in and thwart any settlement efforts between the Acting General Counsel and Respondent. This is an invitation for untold delay, makes their participation anathema to these proceedings, and prejudices the charging party.

To the extent the putative intervenors have any interest in issues that are relevant to the case, it is limited to the remedy only, which can be adequately protected by permitting the putative intervenors to participate as amici. *See Hotel Del Coronado*, 345 NLRB 306, n. 1 (2005) (attorney for National Right to Work Legal Defense Foundation,

who represented an employee of the employer opposed to unionization, sought to intervene to urge that a neutrality agreement between the union and the employer's predecessor was unlawful. The Board denied the motion to intervene but permitted filing of an amicus brief).

B. Vigorous Opposition To The Remedy Putative Intervenors Mistakenly Believe The Acting General Counsel Seeks Does Not Establish A Basis For Intervention, Especially Where The Asserted Harm Of Unemployment Is Entirely Speculative And Would Be Collateral To The Outcome Of This Case Rather Than A Direct Result

In their motion to intervene, putative intervenors allege that the complaint seeks a "draconian remedy" of "closure of their work site and their discharge from employment." Motion to Intervene at 1. Again, the complaint seeks no such thing. The complaint seeks an order "requiring respondent to have the [Pacific Northwest IAM] Unit operate its second line of 787 Dreamliner aircraft assembly production in the State of Washington, utilizing supply lines maintained by the Unit in the Seattle, Washington, and Portland, Oregon, area facilities." Complaint, ¶ 13(a). In the following paragraph, the complaint explicitly states that

> [o]ther than as set forth in paragraph 13(a) above, the relief requested by the Acting General Counsel does not seek to prohibit Respondent from making non-discriminatory decisions with respect to where work will be performed, including non-discriminatory decisions with respect to work at its North Charleston, South Carolina, facility.

Complaint, ¶ 13(b). Thus, the putative intervenors' allegation that the complaint seeks the closure of the work site and their discharge, is undeniably incorrect. The motion to intervene should be denied as it is based on a fundamentally wrong understanding of what this case is about.

As explained in section 2 below, the putative intervenors' fear of unemployment is speculative and based on a series of assumptions that may not be true. But even if the remedy was *certain* to cause the putative intervenors' unemployment, this still would not constitute cause to intervene here. Their interest is only in the remedy, if it is granted. At the very most, putative intervenors should be granted leave to participate as amici in the remedial stage of the proceeding.

1. Under Established General Counsel Policy (GC Memo 82-21), A Non-Party Should Not Be Permitted To Intervene Based On Opposition To A Restoration Remedy.

In General Counsel Memorandum 82-21 (1982), Associate General Counsel Joseph E. DeSio explained why, in unilateral subcontracting cases where a restoration remedy is sought, the subcontractors should not be permitted to intervene. GC Mem. 82-21, 1982 WL 45397 (1982) (attached hereto as Attachment "A"). In such cases, the subcontractors have a potential interest, in that if the work that was unilaterally subcontracted was remedially restored to the bargaining unit, the subcontractor would necessarily lose that work. This situation is clearly analogous to the asserted interest in the present motion to intervene, where putative intervenors allege they will lose work if the remedy is granted here.

The General Counsel Memorandum concluded that because, in such cases the subcontractors' interests relate to the remedy only, they should only be permitted to participate as amici. "Such participation would be for the limited purpose of adducing evidence tending to show that the remedy would impose an inequitable burden on it." *Id.* at 2 (citing *Mobil Oil Corporation*, 219 NLRB 511 (1975); *Hillside Manor Health Related Facility*, 257 NLRB 981 (1981), *enforced*, 697 F.2d 294 (2nd Cir. 1982)).

As to motions to intervene by these parties, however, the General Counsel Memorandum states:

> Counsel for the General Counsel should oppose any such motion, except as noted, infra, on the following grounds: First, the subcontractor is not faced with the prospect of a remedial order against it. Second, the cases do not require that intervention be granted. Third, it does not appear that a subcontractor is an "interested party" within the meaning of the APA. Fourth, even if the subcontractor is an "interested party" under the APA, this fact does not require intervention under Section 554(c). Finally, it should be argued that the subcontractor's interest is only with respect to the remedy and that interest can be protected by participation as amicus.

Id. (citing *Camay Drilling Co.*, 239 NLRB 997 (1978)) (footnote omitted). The subcontractors' loss of the contract is a much more foreseeable and direct consequence of a restoration order than the putative intervenors' feared unemployment here. Nonetheless, the General Counsel Memorandum found that the subcontractors should not be permitted to intervene. The same factors described by the General Counsel Memorandum also hold true for the putative intervenors in this case – they are not faced with the prospect of a remedial order against them; the cases do not require that intervention be granted; the putative intervenors do not appear to be "interested parties;" and their interest is only with respect to the remedy, which could be protected by participation as amici. Thus, intervention is not warranted in this case and the motion should be denied.

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2. The Harm Putative Intervenors Attribute To The Proposed Remedy Rests Entirely On Speculation.

In their motion to intervene, putative intervenors allege that they have a "direct and tangible stake in the outcome of this case because their employment will almost certainly be terminated if the General Counsel's proposed remedy is imposed". Motion to Intervene at 3. The declarations of the putative intervenors, however, reveal how this anticipated harm is speculative.[2]

Putative Intervenor Murray admits in his declaration that he does not work in the Final Assembly and Delivery facility which is the subject of this complaint. *See* Declaration of Dennis Murray in Support of Motion to Intervene, p. 6 ("I still work in the 'old' section of the building working on the aft sections of the aircraft"). His fear that he will lose his job stems only from his speculation that "it is possible that I could transfer over to the new facility". *Id.* Murray avers absolutely nothing in support of this "possibility". He also recognizes that the complaint does not actually seek his unemployment, but only the maintaining of the work in the Unit at Everett, WA. However, Murray exacerbates his own anticipated harm by insisting that he would decline to follow the work back to the Pacific Northwest and would rather choose unemployment for himself. *See Id.* ("even if Boeing gave me the opportunity to move to Washington to perform the work that the General Counsel seeks to transfer to that state, I

[2] With respect to the legal sufficiency of the three declarations offered in support of the putative intervenors' motion, only one is signed. The other two do not comply with Board law, and therefore should not be relied on as credible evidence. 28 U.S.C. § 1746 (setting forth signature and swearing requirements for declarations); *In re Veiga*, 746 F.Supp.2d 27, 37 (D.D.C. 2010) ("[s]imply put, Salgado's unsworn (and unsigned) declaration, provided upon his 'honor and conscience,' is not substantially the same as the statutorily required language") (citing *Gotlin v. Lederman*, 616 F.Supp.2d 376, 389 n. 7 (E.D.N.Y.2009)); *see Eurasian Automotive Products*, 234 NLRB 1049, n. 2 (1978) ("we agree with the Regional Director's refusal to consider a declaration submitted in support of Objection 10, which was unsigned and which did not contain sufficient information to enable the Regional Director to contact the declarant").

would oppose and decline such a move"). Mr. Murray's declaration is the only valid testimony before the ALJ and it shows no harm nor establishes a direct interest in this case.

Even if unsigned declarations were evidence, none of the putative intervenors even allege they work in the facility that is the subject of this case.[3] Their interest in this case is based on a series of speculations and assumptions – that they will be transferred to the Final Assembly and Delivery Facility; that the Acting General Counsel's proposed remedy will be granted; that the remedy sought by the Acting General Counsel would result in the closure of that facility (which is not sought as part of the remedy); that they would not remain in or be able to transfer back to their current jobs, or obtain other jobs in South Carolina that are not in the Final Assembly and Delivery facility; and that they would refuse an offer of transfer to retain their employment. Such speculative and self-aggravated harm does not constitute a direct interest warranting intervention in this case.

C. Putative Intervenors' Evidence Concerning Their Opposition To Representation By The IAM At The North Charleston Facility Is Immaterial And Does Not Establish A Basis For Intervention

Putative intervenors state that they seek to participate as parties to the case because "they have relevant evidence concerning their opposition to representation by the IAM at the Boeing facility in North Charleston, South Carolina, including Mr. Murray's successful decertification of the same union in *The Boeing Company / IAM,* Case No. 11-RD-723." Motion to Intervene at 2.

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[3] Putative Intervenor Going also admits that he does not work in the Final Assembly and Delivery Facility. *See* Declaration of Meredith Going, Sr. In Support of Motion to Intervene, p. 2 ("I am currently working in the mid-body plant").

Putative Intervenor Ramaker also admits that she does not work in the Final Assembly and Delivery Facility. *See* Declaration of Cynthia Ramaker in Support of Motion to Intervene, p. 6 ("I work in a building usually called 'off-site warehouse' where the 787 parts are received").

The IAM fully acknowledges and agrees that the putative intervenors, along with most private-sector workers in the United States, have important rights under the NLRA to free choice of whether or not they wish to be represented by a labor organization. The putative intervenors' Section 7 rights and their attitude towards IAM representation, however, are completely irrelevant to the issues raised in the complaint and do not provide a basis for intervention here. The complaint concerns whether Boeing managers made certain coercive statements, and whether the company decided to relocate the second 787 line in South Carolina in response to protected activities of the Pacific Northwest workforce.

The putative intervenors also request leave to submit a brief:

> on behalf of themselves and all other employees at Boeing's North Charleston plant, particularly as the case relates to: a) the remedies sought by the General Counsel; b) Intervenors' exercise of their Section 7 rights to reject unionization by the IAM; and c) Intervenors' desire to work in South Carolina in a nonunion setting and to enjoy the protections of Section 14(b) of the Act, 29 U.S.C. § 164(b) and the South Carolina Right to Work law, S.C. Code Ann. §§ 41-7-10 through 90.

Id. As an initial matter, putative intervenors present no basis for their request to intervene "on behalf of themselves and all other employees at Boeing's North Charleston plant". *Id.* There is no legal basis for such "class" intervention, nor is there any factual basis to suggest that the three named putative intervenors adequately represent "all other employees".[4] But moreover, besides the "remedies sought by the General Counsel", the issues which the putative intervenors seek to argue have nothing to do with this case.

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[4] *See, e.g., Washington Gas Light Co.*, 302 NLRB 425, 427 n. 1 (1991) ("[t]he Intervenor has objected to the judge's ruling not to allow him to represent the interests of other employees in these proceedings. As the judge noted, there is no evidence that those employees requested or authorized Stringfellow to represent their interests"). Counsel for putative intervenors, the National Right to Work Legal Defense Foundation, was recently admonished by the Second Circuit when it attempted to represent a class of dissenting employees: "The district court denied the motion because it held that '**Foundation counsel are clearly in conflict with the objectives of plaintiffs** and the putative class and cannot act in their best interests.'...

The complaint alleges that the Respondent has retaliated against IAM members in the Pacific Northwest for exercising their Section 7 rights. The complaint also concerns the Respondent's transfer of work *away* from the Pacific Northwest bargaining units because of their concerted activities. The same charges would have been brought if the work had been sent to Michigan or California. Putative intervenors' desire to work in South Carolina in a nonunion setting, and South Carolina's "right to work" status, have nothing to do with the issues in this case.

It is also worth emphasizing again that nothing in the complaint or proceeding seeks to cause the elimination of current employee jobs or the shutdown of any facilities, and putative intervenors' asserted interest in their fear of losing their jobs is indirect and collateral to the issues in this case.

D. With Respect To The Remedy Sought By Acting General Counsel, The Putative Intervenors' Interests Are Aligned With Respondent's

Putative intervenors' interests in opposing the remedy in this case are aligned with Respondent's, accordingly intervention is not warranted. Both Respondent and putative intervenors vehemently oppose the Acting General Counsel's complaint and particularly the remedy. Putative intervenors embrace and rely on Respondents' answer in explaining their interest in the case. *See* Motion to Intervene at 1. The putative intervenors do not raise any new relevant issues, but rather they join Respondent in opposition to the Acting General Counsel's complaint and proposed remedy. *See, e.g., Semi-Steel Casting Co.*, 66 NLRB 713, 716 (1946) ("[t]he issues raised by the alleged intervenors thus do not differ from those raised by the respondent, which we have found to be without merit").

This conclusion is well grounded in the record." *Scheffer v. Civil Service Employees Assoc., Local 828*, 610 F.3d 782, 786 n. 3 (2nd Cir. 2010), *cert. denied*, 131 S.Ct. 1480 (2011) (citation to lower court slip opinion omitted) (emphasis added).

In *Camay Drilling Co., supra*, the Board found that the "interests of the Trustees are not necessarily identical to that of the Charging party," observing that under ERISA, "they are bound to use their independent judgment with respect to the administration of the trust fund... Accordingly, we do not feel that the interests of the Trustees were adequately protected by allowing their counsel to consult with counsel for the Charging Party during the hearing." *Id.* at 999, n. 10. Here, the putative intervenors are employees of the Respondent and, with respect to their opposition to the remedy, share the interests of Respondent.

Putative intervenors assert that their interests are not aligned with the Respondent's because the Respondent "has no Section 7 rights to refrain from unionization, no rights under Section 9 to decertify an unwanted IAM union (unlike Mr. Murray and his co-workers), and no rights under South Carolina's Right to Work law to refrain from joining or supporting a union." Motion to Intervene, p. 8. It is true that these are some of the differences between the putative intervenors and the Respondent, however these differences are irrelevant to this case. There is no allegation here that any South Carolina employees' Section 7 or Section 9 rights have been violated. There is no allegation that anyone's rights have been violated under the South Carolina "Right to Work" law either, even if the Board had jurisdiction over this state law (which it does not).

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E. The Cases Upon Which Putative Intervenors Rely Are Inapposite Because The Acting General Counsel Does Not Seek A Remedy Against Them, And The Statutory And Representational Rights Of South Carolina-Based Boeing Employees, Though Important, Are Irrelevant To This Proceeding

The cases cited by putative intervenors are distinguishable and inapplicable. Unlike the present case, these cases involve situations where the statutory duties and rights of third parties were *directly* implicated by the Board's action.

Putative intervenors claim that *Camay Drilling*, *supra*, is "directly on point." That case involved an allegation that the employer had unilaterally withheld trust contributions that were required under the CBA. The trustees of the jointly operated pension fund moved to intervene "on the basis that said trusts were entitled to receive the increase in fringe benefits contributions". *Id.*, 239 NLRB at 997. The trustees maintained that under ERISA, they "owe[d] a fiduciary duty to the beneficiaries of the trusts to 'utilize all reasonable and lawful means to effect the collection of amounts owed to the trust[s].'" *Id.* The Board found that the trustees were "interested parties" and should have been permitted to intervene, "[i]n light of the **rigorous fiduciary obligations imposed upon the Trustees by ERISA** with respect to safeguarding and administering the assets of the trust fund". *Id.* at 998 (emphasis added). Thus, *Camay Drilling* is clearly not on point here, where putative intervenors have no fiduciary or other legal duties that would be directly impacted by the outcome of this case.

Similarly, *Local 57, International Ladies' Garment Workers Union v. NLRB*, 374 F.2d 295 (D.C. Cir. 1967), which putative intervenors assert is "[p]erhaps the most important and analogous case," is also easily distinguished from the present case and does not support intervention here. The Board found that the employer in that case had maintained a "runaway shop," but rather than order the employer to restore the runaway

work, the Board ordered the employer to recognize the union as the representative of employees at the relocated facility in Florida. The D.C. Circuit refused to enforce the Board's order, finding it was in violation of the Florida employees' Section 7 rights, and also finding that the Florida employees should have been permitted to intervene in the case. *Local 57* demonstrates a situation where the Section 7 rights of non-party employees *would* be impacted, which is clearly not the case here. Unlike *Local 57*, the proposed remedy here would not order the IAM or anyone else to be certified in South Carolina - the remedy is to preserve the discriminatorily relocated work at the Everett, WA facility. No South Carolina jobs are at stake. Thus, in contrast to *Local 57*, the employees have no direct interest in the case here and intervention should be denied.[5]

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[5] The other cases cited by putative intervenors are also readily distinguishable, as those cases centrally involved the legal rights of the parties who were permitted to intervene. In *Gary Steel Products Corp.*, 144 NLRB 1160 (1963), the essence of the case involved a union's alleged misrepresentations to employees during an organizing campaign. Thus, those employees' Section 7 rights to free choice were at the core of that case and those employees were properly permitted to intervene. *J.P. Stevens & Co.*, 179 NLRB 254 (1969) also centrally involved an organizing campaign and the free choice of a group of employees. The employees who signed authorization cards during the campaign were permitted to intervene to protect their Section 7 rights. In *Sagamore Shirt Co.*, 153 NLRB 309 (1965), employees were permitted to intervene to show that they constituted a majority of employees and did not wish to be represented by the union. At issue in that case was whether the union represented a majority of employees in the bargaining unit, and the employees were properly permitted to intervene so that they could present evidence showing that "their signatures on the union applications were induced through threats, promises of benefits, and other coercions". *Id.* at 311. In *Washington Gas Light Co.*, 302 NLRB 425 (1991), an individual employee's dues check-off was the subject of the case. The individual employee was entitled to intervene to assert his own interests. *See also, Taylor Bros., Inc.*, 230 NLRB 861 (1977), where employees of the Respondent were permitted to intervene in order to present evidence that an election should be directed as a remedy to 8(a)(1), (3) and (5) violations, instead of a bargaining order. *Id.* at 870. In contrast to each of these cases, this case does not involve or directly impact the Section 7 rights of the three putative intervenors or any other South Carolina employees whatsoever.

Putative intervenors also gesture toward cases where unions have been permitted to intervene as parties in Board cases, but these too are inapposite because in those cases, the intervening party had a direct interest in the case. For example, in *Frito Co., Western Division v. NLRB*, 330 F.2d 458 (9th Cir. 1964), non-party unions were permitted to intervene because they claimed jurisdiction over the work at issue in that case. In *Harvey Aluminum*, 142 NLRB 1041 (1963), an employer was allegedly discouraging and interfering with employees who were trying to organize with the Steelworkers union, and Steelworkers union was permitted to intervene.

CONCLUSION

For the forgoing reasons, putative intervenors' motion to intervene as parties in this case should be denied. At the most, they should be granted leave to participate as amici.

Respectfully submitted this 7th day of June, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2011, I caused the foregoing Charging Party's Opposition to Motion to Intervene to be e-filed with the National Labor Relations Board, and a copy to be e-mailed to the following:

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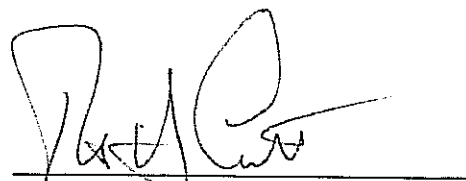

Robert H. Lavitt, WSBA No. 27758

ATTACHMENT A

1982 WL 45397 (N.L.R.B.G.C.)

TO: All Regional Directors, Officers-in-Charge and Resident Officers

*1 SUBJECT: Pleadings Manual Revision—Notice to Nonrespondent Employers in Unilateral Subcontracting Cases when Restoration Remedy is Sought

MEMORANDUM 82–21

June 8, 1982

I. Introduction

In unilateral subcontracting cases, where restoration of the status quo ante is being sought as a remedy, recent cases have raised the question of whether nonrespondent employers who would be affected by the remedial order should be named as parties-in-interest.[FN1] A second issue is whether such employers should be advised of the proceeding, and whether and to what extent they should be permitted to participate. As set forth hereinafter, we have concluded that such employers (subcontractors) [FN2] should not be named in the complaint as parties-in-interest, absent unusual circumstances. However, they should be given notice of the proceeding by service of a copy of the complaint and should be permitted to participate in the proceeding as amici curiae. Additionally, the complaint should allege that a restoration remedy is part of the relief being sought. Attached are revisions of the Pleadings Manual incorporating these provisions.

II. Subcontractors as Parties-in-Interest

The Board has long been authorized to order a restoration remedy in unilateral subcontracting cases. Thus, in Fibreboard Paper Products Corp. v. N.L.R.B., 379 U.S. 203 (1964), the Supreme Court determined that, even though the respondent's motive in subcontracting unit work was economic, rather than antiunion, nevertheless, the Board's order requiring the respondent to resume its maintenance operations and reinstate its employees with backpay was within the Board's remedial authority. In Mobil Oil Corporation, 219 NLRB 511 (1975), enf. den. 555 F.2d 732 (9th Cir.1977), a case involving a unilateral change of subcontractors, the General Counsel also sought a restoration remedy, i.e., that the employer should abrogate the extant subcontract and restore the prior one. The Board declined to grant the remedy. In doing so, the Board pointed out that neither the contract termination nor the displacement of unit employees occasioned thereby was alleged as a violation of the Act. It also noted, inter alia, that the extant subcontractor (who would be losing the subcontract under the proposed order) was not named as a party.[FN3]

Thus, a restoration order was denied in Mobil, in part, because the subcontractor was not named as a party.[FN4] However, Hillside Manor subsequently made it clear that party status for those subcontractors is not a prerequisite for a restoration remedy. In that case, the Board ordered reinstatement notwithstanding the fact that the subcontractor which would lose the work, was not a party to the proceeding. It was sufficient that this subcontractor had the opportunity to be present at the hearing and was permitted to participate as amicus curiae.

Based upon the foregoing, we have concluded that it is not necessary to name the subcontractor as a party-in-interest in the Complaint, absent unusual circumstances.

III. Notice to Subcontractors of the Proceeding and Extent of Participation

A. Notice

*2 As set forth above, in Mobil, the Board, in denying the restoration remedy, noted that the subcontractor was not represented at the hearing. In Hillside Manor, the Board, in granting the remedy, noted that the subcontractor had an opportunity to be present at the hearing and was permitted to participate as amicus. Thus, the subcontractor should be given notice of the proceeding. Further, if the subcontractor appears at the hearing, he should be given an opportunity to be present and to participate as amicus. Consequently, subcontractors should be served with a copy of the complaint and the complaint should contain a specific prayer for relief.[FN5] The attached revisions of Sections 605.2(f) and 1000 of the Pleadings Manual incorporate these requirements.

B. Extent of Participation

The Administrative Procedure Act (hereinafter referred to as the APA) provides in pertinent part:

> (c) The Agency shall give all interested parties opportunity for—
>
> (1) submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit.[FN6]

Thus, if the subcontractor simply wishes to be present at the hearing and to participate as amicus, counsel for the General Counsel should not oppose this level of participation. Such participation would be for the limited purpose of adducing evidence tending to show that the remedy would impose an inequitable burden on it. See, Mobil Oil Company, supra, and Hillside Manor Health Related Facility, supra.

On the other hand, if the subcontractor wishes to intervene, it should so move under Section 102.29 of the Board's Rules and Regulations which provide in pertinent part:

> Any person desiring to intervene in any proceeding shall file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest.... The regional director or the administrative law judge, as the case may be, may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper.

Counsel for the General Counsel should oppose any such motion, except as noted, infra, on the following grounds: First, the subcontractor is not faced with the prospect of a remedial order against it. Second, the cases do not require that intervention be granted. Third, it does not appear that a subcontractor is an "interested party" within the meaning of the APA.[FN7] Fourth, even if the subcontractor is an "interested party" under the APA, this fact does not require intervention under Section 554(c).[FN8] Finally, it should be argued that the subcontractor's interest is only with respect to the remedy and that interest can be protected by participation as amicus.

Any questions concerning the foregoing should be addressed to your Assistant General Counsel.

Joseph E. DeSio
Associate General Counsel

Unilateral Action

*3 Respondent engaged in the acts and conduct described above in paragraph(s) _____,[FN9] (without prior notice to the Union) (and) without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of Respondent's employees with respect to (such acts and conduct) (and) (the effects of such acts and conduct).[FN10]

REMEDIES

As previously indicated (see Introductory Statement, supra) a complaint should, inter alia, advise a respondent as to the specific nature of its alleged unlawful conduct. Since the remedy for most unfair labor practices is a traditional one, it is generally not necessary for a complaint to include a specific prayer or request for remedial relief. However, in those limited circumstances where the remedy being sought is novel or unique, the complaint will not afford a respondent adequate notice of the relief being sought. Therefore, the complaint should contain a separate prayer or request for specific remedial relief.[FN11] While such a prayer or request need not specify all of the remedial relief which is traditional or appropriate, in order to avoid such contentions as "estoppel," "waiver," or "lack of due process," the General Counsel's right to subsequently seek, and the Board's right to ultimately provide, any other appropriate remedy should be specifically preserved.

The samples preceding this section contain language dealing with the need for a remedial bargaining order in Trading Port situations (see sec. 605.2(a), supra) and pleading a restoration remedy in unilateral subcontracting cases (see sec. 605.2(f), supra. The preceding sections also contain suggested language dealing with the status of a strike as an unfair labor practice strike (see sec. 600.1(b) supra).[FN12] Additional samples of specific prayers or requests for relief which have arisen in cases where the remedy was novel or unique are contained in the following illustrative, but not all inclusive, examples:

FN1 See e.g., Hillside Manor Health Related Facility, 257 NLRB No. 134 (1981).

FN2 As used hereinafter, the term "subcontractor" identifies the person who performs the subcontract, and the term "employer" identifies the party who lets the subcontract.

FN3 Since Mobil involved an employer who changed subcontractors, the restoration order had an impact on the subcontractor who would be reacquiring the work as well as on the subcontractor who would be losing the work. By contrast, this memorandum focuses on the more typical situation involving an employer who subcontracts work which it previously performed. However, in cases like Mobil, the Region should apply the principles discussed below to the "losing" subcontractor and the "reacquiring" subcontractor. In this regard, it was noted that the Board's refusal to grant the restoration order in Mobil was based, in part, on the fact that the "reacquiring" subcontractor was not represented at the hearing.

FN4 The factor of nonrepresentation at the hearing is discussed infra.

FN5 It should be noted, however, that the respondent is not denied due process if the remedy sought is not alleged in the complaint. See Local 964, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, (Contractors and Suppliers Association of Rockland County, New York, Inc.), 184 NLRB 625, 626 (1970).

FN6 5 U.S.C. Section 554.

FN7 Cf. Camay Drilling Company, 239 NLRB 997 (1978).

FN8 As set forth above, while Section 554 (c) requires agencies to permit interested parties to participate in the proceeding, it does not mandate that intervenor status be accorded to such parties.

FN9 Precede this allegation with a recitation of the actual changes in employment conditions of, or affecting, unit employees.

FN10 When the unilateral action involves the subcontracting of unit work and the General Counsel is seeking a restoration remedy, the following paragraph should be included in the complaint:

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs(s).... and....., the General Counsel seeks an order requiring the Respondent, inter alia, to reinstitute its.... [insert description of illegally subcontracted work] operation as it existed on ..... [insert date the work was illegally subcontracted] A copy of the complaint should also be served upon the subcontractor who would be losing the work under the proposed order.

FN11 The Regions should, of course, continue the longstanding practice of advising respondents of the relief being sought during all precomplaint settlement discussions and, where appropriate, during counsel for the General Counsel's opening statement at trial.

FN12 As previously noted, allegations with regard to the status of a strike as an unfair labor practice strike are to be included in a complaint even though the respondent has not discriminated against any of the strikers by discharging or refusing to reinstate them. Furthermore, in these cases the complaint should also request an open-ended order requiring the reinstatement, upon application therefor, of all qualified strikers.

OFFICE OF GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD (N.L.R.B.)

1982 WL 45397 (N.L.R.B.G.C.)

END OF DOCUMENT

EXHIBIT E

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19

THE BOEING COMPANY,
Respondent,

Case No. 19-CA-32431

and

IAM DISTRICT LODGE 751,
Charging Party.

INTERVENORS' REPLY TO ACTING GENERAL COUNSEL AND CHARGING PARTY'S OPPOSITION TO THEIR MOTION TO INTERVENE.

I. Introduction.

Intervenors Murray, Ramaker, and Going present the following reply to the Acting General Counsel and Charging Party International Association of Machinists and Aerospace Workers, District Lodge 751's ("union" or "IAM") opposition to their motion to intervene.

Since the NLRB Acting General Counsel and the Union's arguments are in most respects the same, Intervenors address them as one.

II. The Declarants' Declarations Are Genuine.

As a preliminary matter, in their opposition to Intervenors' Motion to Intervene, both

the NLRB's Acting General Counsel ("AGC") and union cast doubt on the authenticity of the Declarations filed by the Intervenors and attached to their Motion. Charging Party's Opp. at p. 9, n.2, page 9; AGC's Opp. at 3. Leaving aside the AGC's and union's questioning of the Declarations, which is tantamount to questioning the professional integrity of Intervenors' counsel, the Declarations are valid. The case law the union cites refers to the unsigned statement of a declarant unknown to the Regional Director, and apparently unrepresented, in support of an election objection. *Eurasian Auto. Prod.*, 234 NLRB 1049 n.2 (1978). In the present case, the identity of the party is known, the party is represented by counsel and is easily reached through counsel. In short, there are no grounds to doubt the authenticity of the Declarations.

Intervenors sought to file their motion as soon as possible, in advance of the hearing date, to give time and opportunity to all parties and the Region or Administrative Law Judge ("ALJ") to adequately respond and rule. For that reason, Intervenors used the convention of the electronic signature.

The undersigned attorneys wish to allay counsel for the AGC and union's attorneys' concerns regarding the validity of Intervenors' Declarations and their attorneys' professional integrity. To that end, the same declarations that were attached to the motion have been signed in ink by the declarants and are available for inspection by counsel. *See* attached Ex. 1.

III. Intervention Would Not Make This Case "Unwieldy and Unmanageable."

Both the AGC and union argue that allowing Intervention in this case would be unduly burdensome on the proceedings. Charging Party's Opp. 3-6; AGC's Opp. 1.

As with its challenge to Intervenors' Declarations, the union attacks the integrity of Intervenors' counsel. The union improperly equates the Intervenors with their attorneys' employer, the National Right to Work Legal Defense Foundation, Inc. ("Foundation"). The union suggests that the "Foundation's motion" "demonstrates what should be avoided here: distractions involving irrelevant and ideological issues" "portend[ing]confusion and delay." Charging Party's Opp. 5. The union goes so far as to describe Intervenors and their counsel's involvement in this case as "anathema to these proceedings."[1] *Id.*

The AGC and union's fears are unfounded. By intervening in this case, Intervenors seek solely to protect their jobs and their Section 7 rights. They are the only parties with Section 7 rights in this case. Intervenors wish only to see the NLRB's complaint dismissed.

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[1]With respect to the union's unwarranted allegations that counsel for Intervenors would seek to turn the proceedings into a showcase for "ideological issues" causing "confusion and delay," attorneys Taubman and Muggeridge, counsel for Intervenors, respectfully point out to the ALJ that they have litigated cases before the presiding Judge, and against counsel for the AGC and Charging Party's General Counsel, any of whom could testify to their professionalism and respect for the Board's litigation process.

Intervenors' counsel have been lead attorneys in many NLRB cases, and no questions have been raised by any client, party, judge, or Board Member concerning their integrity or respect for NLRB process. *See, inter alia*, cases litigated by Glenn Taubman: *California Saw*, 320 NLRB 224 (1995), *enforced*, 133 F.3d 1012 (7th Cir. 1998); *Dana Corp.*, 351 NLRB 434 (2007): *Lamons Gasket*, Case 16-CA-27204 (currently before the NLRB). *See, inter alia*, cases litigated by Matthew Muggeridge: *Lugo (IBEW)*, Case No. 13-CB-18961/2 (currently before the NLRB); *Geary (UNAP)*, Case No. 1-CB-11135 (currently before the NLRB); *Simpson (CWA/AT&T Mobility)*, Case No. 19-RD-003854 (currently before NLRB).

Regarding their planned participation, Intervenors have relevant but limited testimony to offer to rebut the AGC's case. His Complaint is based on the theory that public statements and decisions made by Boeing officials were designed to coerce and punish workers in Washington State for exercising their right to strike. In other words, he argues that Boeing's decision to install a facility dedicated to the Dreamliner program in South Carolina was based on anti-union animus. Charging Party's Opp. 5. Against these charges, Boeing can presumably defend itself. What Intervenors can uniquely offer is relevant "lack of animus" testimony regarding their experience as it relates to Boeing's attitude toward their unionized workplace. Such testimony is undeniably relevant.

In addition, Intervenors would offer concise testimony for the record on which to make their case that the proposed remedy works to infringe on their Section 7 rights. Intervenors' testimony is specific, relevant, and important – and would likely add not more than one-half to one full day of testimony in this proceeding.

IV. The Intervenors' Represent Employees.

The AGC and union challenge the intervention on the grounds that there is no proof that Intervenors represent the employees. Charging Party's Opp. 11; AGC's Opp. 6.

Following its pattern, the union here attacks the integrity of Intervenors' counsel, arguing in bold print that "Foundation counsel are clearly in conflict with the objectives of plaintiffs." Charging Party's Opp. n.4 at 11. In more measured tones, the AGC insists that

"movants cannot be authorized to intervene to represent the interest of other employees unless they provide "evidence that [other] employees requested or authorized [the intervenor] to represent [the other employees'] interests." (citation omitted), AGC's Opp. 6.

Intervenors contend that it may be presumed that they represent Intervenors' co-workers who do not wish to lose their jobs if the NLRB succeeds in closing down the new Dreamliner production line. As an indication of the degree to which Intervenors represent a broad cross-section of their co-workers, in 2009, Intervenor Dennis Murray spearheaded the successful drive to decertify the union in the facility eventually purchased by Boeing. Intervenor Cynthia Ramaker has represented employees in her capacity as President of IAM's local union from the time the union was voted in until its decertification. Murray Decl. 3; Ramaker Decl. 2.

V. Boeing Does Not Adequately Represent Intervenors' Interests.

The AGC and union both argue that Intervenors' interests are adequately represented by Boeing and that intervention would be duplicative. Charging Party's Opp. 12-13; AGC's Opp. 8-10.

For at least three reasons, Intervenors are not adequately represented by Boeing.

First, only Intervenors have Section 7 rights. Their sole interest in this case is to protect those rights, at the same time protecting their jobs. Only as full parties to this case can Intervenors show how their Section 7 rights are implicated by the NLRB's prosecution of their employer. Although most of Intervenors' arguments concerning their Section 7 rights

will be developed through legal briefing, there is a certain amount of live trial testimony that will be necessary. In contrast, Boeing is protecting its business interests and is not primarily interested in protecting Intervenors' statutory rights.

Second, at any time Boeing could settle this case in whatever manner it so chooses, and could have done so at any point up until the present, completely independent of Intervenors' interests. As a massive transnational business enterprise, Boeing has myriad concerns beyond those of the intervening employees. The company has a bottom line to concern itself with; it has government contracts; it has ongoing collective bargaining relationships with the Charging Party. All of these may be a factor in its litigation strategy. Intervenors and their co-workers are one of many economic considerations for the Company.

By contrast, Intervenors have one interest, peculiar to themselves as employees--protecting their rights and saving their jobs in North Charleston. Boeing may not adequately protect that interest.

Third, at trial Boeing will attempt to show that its actions in speaking about and deciding on its new facility in South Carolina were neither coercive nor destructive of employee rights. Intervenors will not make this argument nor rely on any evidence or defense Boeing may offer. As stated, although Intervenors can provide some relevant testimony concerning Boeing's actions with respect to the selection of their workplace for the new production line, their argument is different. Their case will demonstrate how they have a legally protectable interest in not letting the NLRB's remedy lose them their jobs.

VI. Loss of Employment Is an Interest.

The AGC and union argue that Intervenors have "no legally significant direct interest in this proceeding" or "legally protected interest." Charging Party's Opp. 3; AGC's Opp. 5. The AGC describes Intervenors' jobs as "positions they may have obtained due to unlawful employment decisions." AGC's Opp. at 5.

By this conclusory argument, employees can have no "legally protected interest" in their jobs where there is an allegation –any allegation– against the employer concerning that position. It is the allegation that negates the interest and not an analysis of the interest itself. In the case cited by the AGC, *Dilks v. Aloha Airlines, Inc.*, 642 F.2d 1155 (9th Cir. 1981), the court disallowed intervention by a labor union in a case where a pilot sued his employer for constructive discharge in violation of the collective bargaining agreement. The situation here is an ironic reversal of *Aloha Airlines*, where a union, which until recently represented the Intervenors, now argues that they have no legally protectable interest in keeping their jobs.

The AGC and union argue that there is no legal interest in a position that may have been obtained because of illegal employer conduct. In support of this, they again cite *Aloha Airlines, Inc.* There, the court theorized that a junior employee who rose in seniority based on the wrongful discharge of a senior employee would have no protectable interest in his new senior position which he obtained as a result of the illegal conduct of the discharging

employer. Once the discharged employee was reinstated, the junior employee would revert to his original seniority rank. *Id.* at 1157. Similarly, in another case male employees had no interest in maintaining their positions that they might have acquired as a result of unlawful discrimination against female employees. *Donnelly v. Glickman*, 159 F.3d 405 (9th Cir. 1998). There, male intervenors were denied intervention in part because the remedies they sought would be unaffected by the remedy sought by the female plaintiffs alleging discriminatory treatment.

In the present case, Intervenors' interest is distinguishable and legally protectable. First, according to their employer, at least some of the intervenors and many others will lose their jobs, not simply their seniority or particular work assignments. Second, the Company's alleged unlawful act was not unlawful until the AGC alleged it to be so in its Complaint. Boeing's new operations and job hires in South Carolina are allegedly unlawful based on the AGC's theory that opening the plant and hiring the Intervenors and their co-workers was intended by Boeing to punish workers in Washington State. This theory is too tenuous and unproven to remove from employee Intervenors any protectable interest in their jobs. The very novelty of the theory demands the contrary, *i.e.*, that employees be allowed to intervene in the case to fully test the AGC's theory.

VII. Conclusion.

Based on the foregoing, Intervenors respectfully request that the Administrative Law

Judge grant their motion to intervene as full parties in this case based on their direct interest in the outcome of the proceeding, according to the NLRB Casehandling Manual, 10388.1 and NLRB Rule and Regulation 102.29. The Intervenors further request that the Acting General Counsel and Union's oppositions be struck from the record.

Dated this 8th day of June, 2011.

Respectfully submitted,

/s/ Glenn M. Taubman
/s/ Matthew C. Muggeridge

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Reply to Opposition's to Motion to Intervene and the attachments were filed electronically with the NLRB Regional Office using the NLRB e-filing system, and was sent via e-mail to the following additional parties:

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this 8th day of June, 2011.

/s/ Matthew Muggeridge

Matthew C. Muggeridge

coming to our plant in Charleston because of the decertification. There were numerous negative comments made by union leaders in Seattle about South Carolina, the education of the workers here, and how it would be impossible for us to successfully build the Dreamliner.

I have chosen to exercise my rights as a citizen of the United States to live and work in South Carolina. My personal experience with the IAM has been very bad. Although I have nothing against unions, in principle, I strongly believe that membership in a union and representation by a union should not be compulsory. We had a union in our plant. The majority of employees did not want to be represented by that union so it got voted out. Now it seems we are being punished for that choice. I strongly believe that employers should not be told by the federal government or a union where they can establish their operations. If Boeing thinks it can get the job done more profitably and successfully in South Carolina, that's Boeing's decision to make.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 7, 2011.

Cynthia Ramaker

Cynthia Ramaker

EXHIBIT F

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

On June 1, 2011, three individuals: Dennis Murray, Cynthia Ramaker and Meredith Going Sr., through counsel, filed a joint motion to intervene in the above-captioned case with the Regional Director of Region 19 of the National Labor Relations Board (the Regional Director). On June 2, 2011, the Regional Director issued an order referring the motion to me. This case is currently pending the commencement of an unfair labor practice hearing on June 14, 2011.

Board Rule 102.29 Intervention, states in part:

> The administrative law judge shall rule upon all such motions [to intervene] made at the hearing or referred to him by the Regional Director, in the manner set forth in section 102.25. The Regional Director or the administrative law judge, as the case may be, may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper.

The motion to intervene is therefore properly before me for consideration and ruling. *Auto Workers v. NLRB*, 392 F.2d 801, 809 (D.C. Cir. 1967), cert. denied 392 U.S. 906 (1968) and *Biles-Coleman Lumber Co.*, 4 NLRB 679, 682 (1937).

On June 3, 2011, I issued an Order providing the parties herein an opportunity to submit positions on the motion to intervene.

The General Counsel filed a response opposing the motion on grounds, *inter alia*, that the movants lack cognizable interests supporting intervention and because the participation by the movants in the trial would delay and complicate an already complex proceeding.

The Boeing Company (Boeing) filed a response supporting the motion "because Intervenors have a direct interest in the outcome of this case." Boeing points out that the moving parties' South Carolina employment is at risk should the General Counsel's proposed remedy require Boeing work to be shifted from South Carolina to the Northwest and the movants should therefore be regarded as interested parties.

The International Association of Machinists and Aerospace Workers District Lodge 751, affiliated with the International Association of Machinists and Aerospace Workers (the Machinists) opposes the motion to intervene. The Machinists assert the movants have no

legally significant or direct interest in the proceeding and that the Board's policies do not support a right of intervention for secondary parties who might be adversely affected by a Board remedy of unfair labor practices directed to others. The Machinists further assert that granting the intervention would transform an already complicated and lengthy hearing into an unwieldy and unmanageable proceeding.

Based on the motion to intervene, the positions of the parties, and the record of the instant proceeding to date, I find and rule as follows:

Consideration and Ruling

In order to put the instant motion to intervene in context, it is well to very briefly and in a summary fashion describe the primary allegations of wrongdoing in the complaint in the instant case and the remedy being sought by the General Counsel of the National Labor Relations Board (the General Counsel) in that complaint. The General Counsel's complaint alleges, and the answer denies, that in 2009, Boeing improperly decided to transfer work respecting a new commercial aircraft, the 787 Dreamliner, from existing locations in the Northwest United States to a facility in South Carolina in violation of Sections 8(a)(3) and (1) of the National Labor Relations Act (the Act). Generically, such a theory of violation of the Act is a variant of what is sometimes referred to as a "runaway shop" case in which an employer moves its facility or moves work from that facility to a separate facility for improper reasons. The General Counsel's complaint seeks in remedy of the alleged violation of the Act, among other things, that Boeing be required to:

> ... operate its second line of 787 Dreamliner aircraft assembly production in the State of Washington, utilizing supply lines maintained by the [collective bargaining unit employees] in the Seattle, Washington, and Portland, Oregon, area facilities.

Thus, the General Counsel is, in essence, contending in his complaint that Boeing improperly shifted work to South Carolina and the General Counsel, by way of remedy, wants an order requiring the work be shifted back to the Northwest, where the General Counsel asserts it would have remained, but for Boeing's wrongdoing.[1] The Machinists, who filed the initiating charge in this proceeding, support the complaint.

The moving parties here identify themselves as three out of potentially thousands of Boeing and contractor employees who have been, are now, or will be in the future, employed to work on the allegedly shifted work that Boeing now plans to do in South Carolina and who, the motion to intervene asserts, would be adversely affected were Boeing to be required as a result of the instant litigation to relocate the South Carolina work to the Pacific Northwest.

The three individuals in their motion to intervene first seek to be granted unlimited intervention rights to participate fully in all aspects of the case, i.e. the evidentiary stage before

[1] It must be noted that these allegations are currently simply unlitigated complaint allegations, opposed by Boeing, in a case that has not yet been adjudicated.

the trial administrative law judge,[2] as well as participating in the argument or briefing stage of the unfair labor practice proceeding at the trial level and presumably in any subsequent process of review. Thus, they seek the right to participate fully in the litigation, participating in settlement negotiations, recommending and or opposing settlement, contesting the alleged unfair labor practices, i.e. the complaint allegations of wrongdoing, and litigating all aspects of the question of what an appropriate remedy might be, should Boeing be found to have wrongfully placed the work in South Carolina. Alternately, if a full intervention is not granted, the moving parties seek the right to file a post-hearing brief with the administrative law judge on all aspects of the alleged violations and the remedies then at issue.[3]

Although Board Rule 102.29, quoted in part above, permits the administrative law judge to grant "intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper," such judicial discretion is not unlimited and the Board has and will review such administrative law judge determinations in appropriate circumstances. Thus, the Board has on many occasions considered issues of intervention by moving parties in many different circumstances reversing judges and both allowing intervention or denying it in given cases. The Board has therefore provided significant guidance to its administrative law judges on the question of intervention in various types of cases. Importantly however, the Board's discussion and analysis of various intervention situations depends heavily on the type of Board case involved and the type of entity seeking intervention in any given case. It is therefore necessary to be mindful of the type of relationships at issue in the various Board cases that offer guidance, the identity of the intervenor to be, and the relationship between the two in light of the general type and nature of the given case. An important question is whether or not the moving parties are interested parties and, if so, the nature of their interest.

The counsel for the moving parties and Boeing cite a host of Board and court cases dealing with intervention. The General Counsel and the Machinists argue these cases are not on point. I have closely considered the cases with focus on the nature of the relationship of the intervenors or potential intervenors to the issues in the unfair labor practice cases involved. In agreement with the General Counsel, I find the bulk of the cited cases of little value in deciding the instant issue because the interests of the parties whose motions for intervention were under consideration in those Board and court cases are clearly distinguishable, i.e. importantly different, from the instant case.

Many of those Board and court cases cited by counsel for the individuals who here seek to be intervenors and Boeing, while dealing with unfair labor practice intervention, involved

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[2] The motion states at 2:

Intervenors seek to fully participate as parties in this case, as they have relevant evidence concerning their opposition to representation by the IAM at the Boeing facility in North Charleston, South Carolina, including Mr. Murray's successful decertification of the same union in *The Boeing Company/IAM,* Case No. 11-RD-723. Intervenors also wish to participate to oppose the draconian remedies sought by the General Counsel, to wit: the disabling of their work site and their discharge by Boeing in South Carolina.

[3] The motion to intervene states at 2:

Alternatively, Intervenors wish to submit a post-hearing brief on behalf of themselves and all other employees at Boeing's North Charleston plant, particularly as the case relates to: a) the remedies sought by the General Counsel; b) Intervenors' exercise of their Section 7 rights to reject unionization by the IAM; and c) Intervenors' desire to work in South Carolina in a nonunion setting and to enjoy the protections of Section 14(b) of the Act, 29 U.S.C. § 164(b), and the South Carolina Right to Work Law, S.C. Code Ann. §§ 41-7-10 through 90.

representation cases or issues of representation or majority status issues in bargaining units in unfair labor practice cases. See e.g. *Taylor Bros., Inc.*, 230 NLRB 861, 861 fn. 1 (1977), *J. P. Stevens & Co.*, 179 NLRB 254, 255 (1969), enfd. 441 F.2d 514 (5th Cir. 1971, cert. denied 404 U.S. 830 (1971) and *Spruce Pine Mfg.*, 153 NLRB 309, 309 fn. 1 (1965), enfd. in part 365 F.2d 898 (D.C. Cir. 1966). Employee support for or opposition to union representation is a significant interest found by the Board to support intervention in many cases. The instant case does not involve representational questions in any bargaining unit and the extent of support for the Machinists or any other labor organization among Boeing's South Carolina employees, including the potential intervenors herein, is not material to the merits of the allegation of the complaint or the General Counsel's proposed remedy. Therefore the Board cases dealing with such representational situations do not apply to the instant circumstances.

A separate line of Board intervention cases deals with interventions by pension or trust funds which move to intervene to protect assets under the requirements of other federal and state statutes such as ERISA. See e.g. *Operating Engineers Local 12 (Griffith Co.)*, 212 NLRB 343, 345 (1974), revd. on other grounds 545 F.2d 1194 (8th Cir. 1976). *Camay Drilling Co.*, 239 NLRB 997, 998–998 (1978).[4] These Board and court cases involve fiduciary and other financial obligations under various financial regulations and the unique intervention factors in such circumstances. Again these cases are not relevant to the issues here.

Other cited Board cases dealing with intervention address employee intervenors being allowed to participate in unfair labor practice cases dealing with dues obligation of groups that include the employees seeking intervention. A direct financial interest in the outcome of the unfair labor practice case is evident in such a context. That is not the case herein. Finally, there are Board discussions of employee intervention in post-election representation cases involving the intervening employees and cases again where the majority status of employee, including the employees involved in the intervention question, or employee support for a labor organization in certain circumstances, is being litigated. Again these cases are importantly distinguishable.

In my view all the above-discussed types of cases are distinguishable from the intervention issue before me because they do not address or involve the specific interests of the moving individuals here, i.e. employees who, under the theory of the complaint, are employee beneficiaries of an employer's prior discriminatory conduct respecting other employees and who, having gained at others wrongful loss, are at risk of losing such post-discrimination awarded benefits, if the unfair labor practice case against the employer is lost and the employer is ordered to return the wrongfully removed benefits to the original discriminatees.

The moving employees advance on brief the District of Columbia Circuit Court's decision in *Local 57, International Ladies' Garment Workers Union v. NLRB*, 374 F.2d 295 (D.C. Cir. 1967), denying enforcement of *Garwin Corporation*, 153 NLRB 664 (1965). The General Counsel argues it is distinguishable. The decision and the Board case it reviews are worth of examination. In *Local 57*, the District of Columbia Circuit Court considered and denied enforcement of a runaway shop violation remedy directed in a Board decision in which a New York employer was found to have discrimatorily closed its New York facility, moved to a Florida

[4] In this context the Board cited Section 554(c) of the Administrative Procedure Act 75 U.S.C. Sec. 551-559. (hereinafter referred to as the APA) which provides, in pertinent part:

> (c) The agency shall give all interested parties opportunity for denied
>
> (1) submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit.

location, and there resumed its New York operations with new employees. The Board in the decision under review, differently titled from the Circuit Courts decision as *Garwin* Corporation, changed its up-till-then traditional remedy in runaway shop cases. In *Local 57 the* District of Columbia Circuit Court considered the Board's new remedy.

In earlier Board cases, and in the remedial order of the Trial Examiner in *Garwin, 153 NLRB 664, (TXD)* at 664, which trial examiners decision was the trial judges decision that the Board considered in its *Garwin* decision, the up-to-that time traditional remedial order for runaway shop violations under Section 8(a)(3) of the Act directed the runaway employer to either return to the original (here New York) location and resume operations there or, in the alternative, if the employer chose to continue operations only at the new facility (here Florida), it must, as part of the directed Board remedy in such a circumstance, undertake certain actions and obligations at that new facility. More specifically, if the employer's election was to stay at the new facility, the employer under this older runaway shop remedy would be ordered to bargain with the union "contingent 'only upon proof' that the Union represents a majority of employees at that facility", 153 NLRB 664, (TXD) at 665.

The Board in *Garwin*, modifying the remedial order of the trial examiner, which was as described above, explicitly changed the trial examiner's traditional remedy in the case and ordered as part of its new remedy that the employer, if it elected to stay in Florida, must recognize and bargain with the union as the representative of the new location's unit employees irrespective of the union's majority status within that employee complement. The Court in *Local* 57, reviewing the Board's *Garwin decision,* rejected the Board's new remedial bargaining obligation imposition because, the court analyzed, the Board order imposed a bargaining obligation on employees at the new facility independent of consideration of those employee's support for the union in the bargaining unit at that facility and therefore the remedial order potentially imposed union representation on the new employees without the union enjoying majority support among those employees. The Circuit Court decision thus considered the question of union support among the new employees in the new facility, i.e. the shop that ran away, in reviewing the Board decision. In *Local* 57 then, the representational interests of new facility employees were a critical factor in the Court's decision.

The moving employees argue that the Circuit Court in *Local* 57, in considering the union sentiments of the new employees at the employer's new facility, supports the notion that the rights of employees in the instant case at the new site of work – those in South Carolina – should have their views on union representation considered and this fact, the counsel for the three argues, further supports and sustains the employees' motion to intervene herein.

The problem with the rationale asserted by counsel for the moving employees is that in the instant case neither the complaint allegations nor the remedy sought by the General Counsel considers South Carolina employee union sentiments or the representation rights of South Carolina employees at all. Nor does General Counsel via his sought after remedy seek to impose on South Carolina employees a bargaining obligation, or seek to award, conditionally or unconditionally, the Machinists any representational rights whatsoever respecting any employees in the new South Carolina location. The General Counsel's complaint and proposed remedy simply do not address or seek to effect in anyway a change in the representational rights of the South Carolina employees who received the alleged runaway work. That being so, employee sentiments at the new location, contrary to the circumstances in Local 57, are not at issue in the instant case and are irrelevant and immaterial to the theories of the complaint violations and the appropriateness of the remedy sought. To repeat, the question of union representation or non-representation of the South Carolina employees by the Machinists or any other labor organization will not be affected by any possible application of the remedy sought by the General Counsel. Thus in my view *Local* 57 is distinguishable for the instant case and

gives no succor to the moving parties quest for intervention to address employee union sentiments.

I consider the closest situation to the circumstances of the current moving parties to be a Board unfair labor practice case dealing with Section 8(a)(3) and (1) discriminatory conduct violations of the Act, wherein an employee or employees obtained a position or other benefit as a result of complaint alleged wrongful discrimination against other employees and those benefitting employees sought to intervene in the Board unfair labor practice case to preserve the benefit they received from the Employer's alleged discrimination against others. Thus, for example, this situation might arise if a new employee who replaced a wrongfully discharged employee feared his or her newly obtained work benefits or job would be threatened, or even lost if the wrongdoing termination that created the job vacancy that was thereafter given to the potential intervenor to obtain the work was undone by a Board remedial order directing the employer to take back the wrongfully discharged employee or restore the benefits wrongfully passed to other employees. Thus, the new or replacement employee i.e. the employee receiving the benefit lost by the original employee earlier discriminated against, might understand that his or her benefits were threatened by such an NLRB adjudication and NLRB remedy of such employer discrimination and, this employee might seek on that basis to intervene in the wrongful discrimination litigation and oppose any remedy that might reinstate the former employee or transfer work back to the discriminated against employee to the intervening employee's detriment.

Since unfair labor practice cases involving allegations of violations of Section 8(a)(3) of the Act are common, it might be expected that the myriad beneficiaries of such discrimination might commonly seek to intervene in Board cases. Indeed the fact that such Board intervention cases are rare if extant at all, the General Counsel and the Machinists argue, supports the proposition that such interventions are not proper. Further they argue that were such interventions proper, the nature of Board unfair labor practice cases would be significantly different.

Highly relevant to that specific relationship of potential intervenor and unfair labor practice case, however, are two squarely in point cases from the United States Courts of Appeals for the 9th Circuit addressing intervention decisions made in United States Federal

District Court litigation under Federal Rule of Civil Procedure 24.[5] In my view they provide important guidance and instruction in this connection. In the first case, *Donnelly v. Glickman*, 159 F3d 405 (9th Cir. 1998), the Circuit Court sustained the United States District Court's denial of a motion to intervene stating, in part, at 411:

> The proposed intervenors also argue that they have an interest in Donnelly's and O'Connor's individual remedial requests involving work assignments and promotions. However, the proposed intervenors have no protectable interest in positions that they may have obtained due to specific discriminatory employment decisions.

In the second case, *Dilks v. Aloha Airlines, Inc.* 642 F.2d 1155, 1157 (9th Cir. 1981)(per curiam), the Circuit Court under FRCP Rule 24 considered the US District Court's denial of a motion to intervene in an action by an individual alleging wrongful discharge. ALPA, a labor organization, sought to intervene. The Court noted at 642 F.2d at 1157:

> Finally, ALPA contends that it must defend the rights of pilots junior to Dilks, who may be adversely affected if Dilks is reinstated. It is, of course, true that whenever someone is discharged, those junior to him may improve their seniority, and, if a reinstatement is required, the juniors will revert to a lesser seniority. [Citation omitted.] But the juniors have no legally protectable right to benefit from an invalid discharge.

I find the moving employees herein to be similarly situated to the intervenors in the Court of Appeals *Donnelly* and *Dilks* cases discussed immediately above. As in the cited cases, if the work at issue in the instant case is found to have been improperly taken from the Northwest and sent to South Carolina, and if the General Counsel's proposed remedy is adopted, i.e. sending the work back North, then the South Carolina employees, including the moving parties herein, were and are, respectively, at risk to lose the benefit of that illegally transferred work and have the benefits to them of being employed to do work that Boeing illegally transferred withdrawn. In this situation they are legally equivalent to those who were seeking intervention in the 9th Circuit cases cited above. I find therefore the proposed intervenors herein, as was true concerning the potential intervenors in the cited cases, have no protectable interest in the positions they seek to protect or the work they may have obtained or

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[5] FRCP Rule 24. Intervention

(a) Intervention of Right.

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention.

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

will obtain due to the complaint alleged specific discriminatory employment decisions of Boeing. Without such protectable interest, as in the cases cited, the movants' motion to intervene is not well founded. The movants are not simply not directly interested parties with a legitimate direct interest in the outcome of the unfair labor practice proceeding under the cases cited.

I have found the two cited 9th Circuit Court of Appeals cases persuasive in establishing the moving parties here have no protected or direct interest in the instant case. I further find this lack of direct interest sufficient, standing alone, under the above analysis, to justify denying the motion to intervene. In addition, however I find there are important independent factors supporting a denial of the motion for intervention in this case.

First, there is no contention, nor based on my experience with the litigation to date would I find, that Boeing or any other party is not well represented by counsel and is not devoting sufficient time, attention and resources to make this a well litigated case in which all the relevant issues under the complaint and the proposed remedy are rigorously dealt with. The adversary system of jurisprudence will work in this case without additional parties. Thus, there is no suggestion that intervention by anyone is needed to provide rigorous representation on behalf of any current party or any complaint allegation or complaint proposed remedy.[6]

Second, if intervention offers no prospect of improving or enhancing the quality of unfair labor practice representation or the speed or efficiency of the instant litigation, it does to the contrary threaten to complicate and delay the trial. It is clear, and I find, the litigation of the General Counsel's theories of discrimination and Boeing's economic defenses to those allegations and to the proposed remedy in the instant case will involve substantial and complicated procedural and evidentiary issues regarding disputes regarding discovery, privilege and admissibility, complications respecting the production and management of voluminous documents and the production, organization and management of information of a confidential and proprietary nature, the handling of which will involve procedures, protocols and agreements among the parties to insure confidentiality, limited circulation and use, circumspection in document handling, and the probable initiation of sealed exhibit protocols. Such processes, as well as the disputes that arise respecting the obtaining and use of such information, are best handled with the fewest parties proper under the circumstances. In a case involving very substantial disputed documentary and confidential evidence of this type, this is no light or inconsequential matter. Adding another party litigant to the trial mix is a seriously complicating event. Even with the possibility of limitations on an intervenor's participatory rights, as Boeing suggests,[7] granting the motion to intervene would both further complicate and protract and delay the proceeding.

Given all the above and considering the motion to intervene, the arguments of the movants, the positions of the other parties as described, the Board and court guidance cited,

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[6] To the extent the moving parties in their motion to intervene represent they have personal evidence to offer, they are not precluded from becoming witnesses on behalf Boeing or any other party to the litigation. Witnesses of any party, or potential witnesses, who have relevant evidence to offer, howsoever important, are not elevated to the status of intervenors simply by virtue of their self declared value as witnesses.

[7] Boeing in its position statement at 3 asserts:

Boeing is mindful that proceedings in this case are expected to be lengthy and that, accordingly, it may be appropriate to place reasonable limitations on the time allocated to Intervenors to present their case. Boeing also reserves the right to object to particular evidence offered by Intervenors on the basis of relevance and other grounds, including evidence identified in Intervenors' Motion.

and the record of the litigation as a whole to date, and noting the discretion the Board's Rule 102.29 affords an administrative law judge hearing an unfair labor practice case on motions to intervene, I find there is no reasonable basis under all the circumstances to allow the intervention. I shall therefore exercise my discretion to deny the motion to intervene.[8]

Based upon all the above, I issue the following:

ORDER[9]

The Motion to Intervene shall be, and it hereby is, denied.

Issued at San Francisco California, this 8th day of June, 2011.

Clifford H. Anderson
Administrative Law Judge

[8] The motion's alternate request that the movants be allowed to brief the issue of remedy, in essence a request to file an *amicus curiae* brief, seems to me to be best directed to the Board in considering any remedy in this case on exceptions. It is only at the Board level and thereafter that policy arguments should be made. Administrative law judges, including this one, simply apply current law. At the trial level precedent not policy prevails. Motions concerning amicus filings, should the matter come before the Board on exceptions, would properly be directed to the Board at the appropriate time.

[9] Appeals of administrative law judge rulings on motions to intervene filed pursuant to the Board's Rule 102.29 are governed by the Board's Rule 102.26.

FORM NLRB 577
(4-84)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

AFFIDAVIT OF SERVICE OF – Ruling on Motion to Intervene

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by facsimile transmission upon the following persons, and by regular mail addressed to them at the following addresses:

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MARA-LOUISE ANZALONE, ESQ., PETER FINCH, ESQ. AND RACHEL HARVEY, ESQ. NLRB REGION 19 915 SECOND AVENUE, ROOM 2948 SEATTLE, WA 98174-1078 THE BOEING COMPANY ATTN: MR. DOUGLAS P. KIGHT, ATTORNEY PO BOX 3707, MS 13-08 SEATTLE, WA RICHARD B. HANKINS DREW E. LUNT, ESQ. ALSTON D. CORRELL, ESQ. MCKENNA LONG & ALDRIDGE, LLP 303 PEACHTREE STREET, NE, SUITE 5300 ATLANTA, GA 30308-3265 CHRISTOPHER CORSON, GENERAL COUNSEL IAMAW 9000 MACHINISTS PLACE UPPER MARLBORO, MD 20772-2687 DENNIS MURRAY, CYNTHIA RAMAKER & MEREDITH GOING, SR. C/O GLEN M. TAUBMAN, ESQ. MATTHEW C. MUGGERIDGE, ESQ. NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC. 8001 BRADDOCK ROAD, SUITE 600 SPRINGFIELD, VA 22151-2110 TOM WROBLEWSKI, PRESIDENT MACHINISTS, DL 751 9135 15TH P1. S SEATTLE, WA 98108-5100	WILLIAM J. KILBERG, ESQ., DANIEL J. DAVIS, ESQ. PAUL BLANKENSTEIN, ESQ. AND MATTHEW D. MCGILL, ESQ. EUGENE SCALIA, ESQ. GIBSON, DUNN & CRUTCHER, LLP 1050 CONNECTICUT AVENUE, NW WASHINGTON, D.C. 20036-5306 DAVID CAMPBELL, ESQ., CARSON GLICKMAN-FLORA, ESQ. ROBERT L. LAVITT, ESQ. JENNIFER ROBBINS, ESQ. SEAN LEONARD, ESQ. SCHWERIN, CAMPBELL, BARNARD, IGLITZIN $ LAVITT, LLP 18 WEST MERCER STREET, SUITE 400 SEATTLE, WA 98119-3971

Subscribed and sworn to before me this
8th day of June 2011.

Designated Agent

United States Government

NATIONAL LABOR RELATIONS BOARD

Division of Judges
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June 8, 2011

TO:

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FROM: Judge Clifford H. Anderson

RE: THE BOEING COMPANY, 32-CA- 32431 - ADMINISTRATIVE LAW JUDGE'S RULING

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