UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19

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THE BOEING COMPANY,
Respondent,

Case No. 19-CA-32431

and

IAM DISTRICT LODGE 751,
Charging Party.

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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

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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