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

Glenn M. Taubman
Matthew C. Muggeridge
c/o National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600

Springfield, VA 22160
Tel. 703-321-8510
gmt@nrtw.org
mcm@nrtw.org

Attorneys for Intervenors

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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

Glenn M. Taubman
Matthew C. Muggeridge
c/o National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, VA 22160
Tel. 703-321-8510
gmt@nrtw.org
mcm@nrtw.org

Attorneys for Intervenors

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:

Administrative Law Judge Clifford Anderson
Division of Judges,
901 Market Street Ste. 300
San Francisco, CA 94103-1779
Fax No. (415) 356-5254

Richard L. Ahearn, Regional Director
richard.ahearn@nlrb.gov

Mara-Louise Anzalone
Counsel for the Acting Genenral Counsel
National Labor Relations Board
mara-louise.anzalone@nlrb.gov

David Campbell
Carson Glickman-Flora
Schwerin, Campbell, Barnard, Iglitzen & Lavitt, LLP
campbell@workerlaw.com
flora@workerlaw.com

William J. Kilberg
Daniel J. Davis
Counsel for The Boeing Co.
Gibson, Dunn & Crutcher
ddavis@gibsondunn.com
wkilberg@gibsondunn.com

Richard B. Hankins
McKenna Long & Aldridge
Counsel for The Boeing Co.
rhankins@mckennalong.com

this 9th day June, 2011.

/s/ Matthew Muggeridge
Matthew C. Muggeridge