

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

**THE BOEING COMPANY**

and

**Case 19-CA-32431**

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

**RULING ON THE RESPONDENT'S MOTION FOR CLARIFICATION REGARDING  
PROTECTIVE ORDER AND AMENDED PROTECTIVE ORDER**

On August 12, 2011, I issued a Protective Order in the above captioned case. On August 17, 2011, the Respondent filed a Motion for Clarification Regarding Protective Order. On August 19, 2011, the General Counsel and the Charging Party filed responses to the motion.

Based on the motion and responses, the argument of the parties at the hearing and based on the entire record to date, I find as follows.

**The Respondent's Individual Requests for Clarification**

**The Respondent's Request 1**

The Respondent's first requested clarification seeks to extend the limited access restrictions of Section IV B. of the Protective Order to its Designated Confidential Information during the adjudication process. The General Counsel does not oppose the modification but seeks to also include the possibility of agreement that a document is not confidential. The Charging Party proposes its own modified language. The proposed language of the Respondent itself modified by the General Counsel's proposal is adopted and entered in the Amended Protective Order attached hereto as "Appendix."

## **The Respondent's Request 2**

The Respondent's second requested clarification of the Protective Order seeks to include within the Section I. definition of "All Party Agreed Confidential Information" the Respondent's designated confidential information which has not been timely challenged by the other parties under the time limits of the Protective Order. The General Counsel does not oppose the proposal language change. The Charging Party opposes the change as unnecessary and redundant. The Respondent's proposed language is adopted and entered in the Amended Protective Order attached hereto as "Appendix."

## **The Respondent's Request 3**

The Respondent's third requested clarification seeks to amend the Protective Order's definition of "Qualified Persons" under Protective Order Section 1. Definitions to limit the access of individuals as designated by Boeing respecting Respondent Designated Confidential Information that has not been successfully challenged under the Protective Order. The General Counsel does not oppose the Respondent's proposal but advances as "more appropriate" the additional inclusion of language providing for the possibility of agreement by all the parties. The Charging Party opposes the Respondent's proposed modification as restricting its interim access rights. I have combined the proposals of the Respondent and the General Counsel and added language specifying the possibility of interim access judicial orders. The described language is entered in the Amended Protective Order attached hereto as "Appendix."

## **The Respondent's Request 4**

The Respondent's fourth requested clarification seeks clarification of the standard that this tribunal will use to adjudicate challenges concerning Boeing's proposed restrictions on Charging Party access. The Motion argues at 3:

This tribunal's articulation *now* [italics in original] of the standard to be applied will facilitate Boeing's decisionmaking regarding which materials to produce on a "restricted" basis, and the appropriate contents of the accompanying logs.

The General Counsel and the Charging Party oppose the Respondent's proposal as improperly providing an erroneous substantive legal standard in a procedural protocol.

The evidentiary privilege involved has its roots in *Berbiglia, Inc.*, 233 NLRB 1476 (1977), which discussed the need for parties to withhold from disclosure materials revealing future negotiating strategy from their bargaining opponent. This has been specifically applied to employer materials. Thus in *Boise Cascade*, 279 NLRB 422 (1986), the Board approved the rulings of the administrative law judge who held the

privilege involved "a balancing of the parties' interests" (279 NLRB 432) and determined that the employer's materials dealing with its negotiations strategy need not be disclosed to its bargaining opponent.

The important element here is that the test is one of weighing or balancing the conflicting interests involved. This process the Supreme Court teaches in *Upjohn Co. v. U.S.*, 449 U.S. 383, 392 (1981), involves resolution on a "case-by-case" basis" (449 U.S. at 396-397), quoted with approval in *Patrick Cudahy, Inc.*, 288 NLRB 968 (1988) at 971. Thus no general, across the board, determination may be made respecting the application of this labor relations specific privilege to the as yet unidentified materials the Respondent plans to put in issue under the Amended Protective Order.

Further and equally important, the Respondent is seeking a recitation within the Protective Order of the standards to be applied to determine and set special access limitations on Charging Party counsel and others. The Protective Order recites that existing legal standards for determining confidentiality and providing the limits on the disclosure and use of such materials are retained under the Order. It repeatedly recites that the parties rights in these regards are unmodified by the Order which is explicitly intended by its terms to be procedural rather than substantive in its protocols. The law is clear that such limiting arrangements and circumstances are setting specific and may not be generalized. As I said at the hearing during argument and discussion of protective orders, often such limits must be determined on a case by case or document by document basis.

Given all the above, I find it would not be informative nor useful to set forth a general or default standard for either determining the privilege status of labor relations materials generally or to make similar general findings respecting the types of special limitations that would be applied to such materials within the Protective Order. The Respondents request here will be denied and the Protective Order will not be modified in this regard.

#### **The Respondent's Request 5**

The Respondent's fifth requested modification seeks an addition to the current sentence within the Protective Order Section II. B. "The Respondent shall also submit to the other parties a showing of good cause setting forth the reason as to why the document or information must be treated as Confidential Information, as defined herein." The Respondent argues that the requirement should only be imposed upon the Respondent if any other party so requests. Not to do so, argues Boeing in its motion at 4, would impose an undue burden and require the preparation of a showing of good cause "upon even utterly un-controversial designations."

The Charging Party and the General Counsel oppose the proposal as undercutting the substantive law on the issue which requires such a good faith belief showing before the Respondent seeks to shelter given documents under the Protective

Order and further requires a judicial finding of good cause. I find no basis to modify the language of the Protective Order. The proposed change is rejected.

### **The Respondent's Request 6**

The Respondent's sixth requested clarification of the Protective Order goes to the final sentence in Section II. B. "Upon request, counsel for the Respondent will identify the category in the Bodensteiner Declaration to which a particular document or documents corresponds." The Respondent notes not all documents it will identify as confidential will necessarily correlate to the named affidavit.

The General Counsel and the Charging Party oppose this portion of the Respondent's motion arguing that the affidavit involved is the only factual basis yet provided to the parties justifying a protective order protocol.

In as much as the Respondent is obligated to provide a showing of good cause under the Protective Order Section II. B. for each document submitted under the Protective Order, it is not necessary to require the Respondent to prove it in a particular manner. I find it unnecessary to retain the language at issue and it will be removed. The substantive requirements remain with the Respondent but it may fulfill its obligations in the manner it thinks appropriate.

### **The Respondent's Request 7**

The Respondent's seventh requested clarification addresses the separate categories set forth in Section II. B. of the Protective Order, "redacted document" and "modified document," noting the "difference is not clear." The General Counsel and the Charging Party disagree.

The relevant language used in the Protective Order is clarified as follows. A redaction is the masking or removal of part or parts of a document. Thus social security numbers may be "blacked out", rendered illegible by other means or even physically expunged from a document. Such a redacted document would no longer be confidential because it no longer contained confidential social security numbers. The term in the Protective Order will be used in the manner set forth above.

In the Protective Order, a modification means the changing of part or parts of a document. Thus confidential amounts in a list or other rendering may be rendered non-confidential by modification such as rounding, or otherwise converting the amounts listed into other forms so that the document retains its relevance to the matters in controversy but is no longer able to disclose confidential information. The term in the Protective Order will be used in the manner set forth above.

## **The Respondent's Request 8**

The Respondent's eighth and final request, as set forth in its Motion at 5, is as follows:

Boeing requests clarification concerning the intended use of the "cover sheet" required under Section II. A. In practice, Boeing must initially present all documents as "Respondent Designated Confidential Information". Thus, it is not clear how and when the other checkboxes (*i.e.*, "All Party Agreed Confidential Information" and "Adjudged Confidential Information") will be used, and which parties (if any) are responsible for altering the cover sheet when a document changes categories. Boeing requests that this tribunal further explain the use of "cover sheets" and the parties' respective responsibilities for maintaining and revising them.

The General Counsel and the Charging Party argue that, to the extent the matter needs further discussion, it is better addressed outside the Protective Order.

The Protective Order calls for "cover sheets" to better insure the confidentiality of the contents of the first page of the documents and to better identify any particular document as confidential by its distinctive cover. The Respondent is responsible for the initial preparation, application and maintenance of the documents entered into the Protective Order protocol as "Respondent Designated Confidential Information". Thereafter the parties will be responsible for maintaining their own copies. Respondent will maintain additional jackets which may be affixed to documents as needed during the process.

The Respondent will check the initial box for "Respondent Designated Confidential Information", at the time the documents are placed into the Protective Order process. If a document submitted under the Protective Order protocol is not timely challenged or the parties reach agreement it should be regarded as confidential under the Protective Order, the Respondent and each party for its own copy of the document, will check the box on the second line for "All Party Agreed Confidential Information." If and when a document is found to be "Adjudged Confidential Information" by the administrative law judge or reviewing authority, it will be marked by all parties accordingly by checking the appropriate box.

~~I find it unnecessary to modify the language of the Protective Order respecting cover sheets.~~

## **Summary and Conclusion**

I have considered each of the Respondent's 8 items set forth in its motion, as well as the positions of the other parties on the matters raised. Based on the filings,

the record discussions and the entire proceeding to date, I have found and concluded certain aspects of the Protective Order should be changed and as to other aspects concluded the Protective Order should not be changed, as set forth above.

The portions of the Respondent's motion granted above, in some cases as further modified by the suggestions of the other parties, which deal with changes in the language of the current Protective Order, are incorporated in the attached Amended Protective Order. The proposals of all parties not specifically sustained above are denied. The explanations of the Protective Order contained herein will inform the interpretation and application of the Amended Protective Order. The Amended Protective Order will supersede the current order and will be effective immediately upon issuance of this ruling and order.

**SO ORDERED<sup>1</sup>**

Issued at San Francisco, California this 22<sup>nd</sup> day of August, 2011.



---

Clifford H. Anderson  
Administrative Law Judge

---

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

APPENDIX

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

THE BOEING COMPANY

and

Case 19-CA-32431

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

AMENDED PROTECTIVE ORDER

I. Definitions

"Acting General Counsel" means the Acting General Counsel of the National Labor Relations Board or his successors.

"Board Proceeding" means the hearing, adjudication, or administrative appeals of any matter arising in connection with *The Boeing Company*, National Labor Relations Board Case 19-CA-32431, including, without limitation, any compliance proceeding.

"Charging Party" means the International Association of Machinists and Aerospace Workers, District Lodge 751.

"Confidential information" is any type of information which contains, includes, or consists of confidential, proprietary, and/or trade secret financial, personal, business, or technical information that the Respondent maintains in confidence in the ordinary course of business and which, if disclosed, will cause specific financial and/or competitive harm to the Respondent. The information has been submitted by the Respondent to the court under the terms of this protective order and is within the protective order protocols in one of the following sub-categories:

1. "Respondent Designated Confidential Information" - Any type of information

which is submitted by the Respondent to the court under the terms of this protective order and that is designated by the Respondent as confidential by the Respondent and shall contain, include, or consist of confidential, proprietary, and/or trade secret financial, personal, business, or technical information that the Respondent maintains in confidence in the ordinary course of business and which the Respondent reasonably and in good faith believes that, if disclosed, will cause specific financial and/or competitive harm to the Respondent.

2. "All Party Agreed Confidential Information" – Respondent Designated Confidential Information which has not been timely challenged by any party under the terms of this Protective Order.

3. "Adjudged Confidential Information" - Respondent Designated Confidential Information which has been determined by the ALJ, the Board or a United States District Court under this Protective Protocol to be confidential information.

"Party" or "Parties" mean any person or entity that is a party either to the Board Proceeding or any Related Federal Court Proceeding and who has full rights of participation. No current intervenor or amicus has been granted full rights of participation.

"Qualified Persons" includes the following individuals unless such individuals have been specifically limited by name or category to have access to specific confidential information under this Protective Order including being limited through a restriction proposed by Boeing that has not been removed by all party agreement, final adjudication or interim judicial order.

- a. The Administrative Law Judge, the Board members, any judicial officer before whom the Board Proceeding or any Related Federal Court Proceeding is pending, and any of their respective support personnel;
- b. Counsel for the Acting General Counsel and any Board employees who are engaged in assisting or advising Counsel for the Acting General Counsel in the Board Proceeding or any Related Federal Court Proceeding;
- c. Counsel for the Charging Party, including counsel's partners, associates, legal assistants, secretaries, contractors and employees who are engaged in assisting such counsel in the Board Proceeding or any Related Federal Court Proceeding;
- d. Courtroom personnel, including court reporters/stenographic reporters engaged in the Board Proceeding or any Related Federal Court Proceeding;
- e. Individuals assisting Counsel for the Acting General Counsel or the Charging Party, who are designated by Counsel for the Acting General Counsel or Counsel for the Charging Party.



f. Witnesses or prospective witnesses, including expert witnesses and their staff, who reasonably need access to such materials in connection with the Board Proceeding or any Related Federal Court Proceeding provided, however, that no such witness may retain a copy of any material designated as Confidential, except as otherwise provided under the Protective Order.

g. Independent litigation support services, including, but not limited to, document reproduction services, computer imaging services, and demonstrative exhibit services who are involved in the Board Proceeding or any Related Federal Court Proceeding;

h. Any person who authored or received the particular Confidential Information sought to be disclosed;

i. Any other person whom the Parties and Counsel for the Acting General Counsel collectively agree in writing to include and/or to whom the Administrative Law Judge orders disclosure.

j. Confidential Information shall not be disclosed to persons described in (e), (f), (g) or (i) unless or until such persons have been provided with a copy of this Order and have agreed in writing in a declaration submitted to and thereafter maintained by the requesting counsel to abide by and comply with the terms and provisions therein.

Receiving Parties" means (i) the General Counsel, and/or (ii) the Charging Party.

"Related Federal Court Proceeding" means any case seeking judicial enforcement or review, or judicial resolution, of any matter arising in connection with *The Boeing Company*, Board Case 19-CA-32431.

"The Respondent," or the Disclosing Party means the Boeing Company, its subsidiaries, managers, agents, and or representatives, including but not limited to Boeing Commercial Airplanes

## **II. Designation and Disclosure of Confidential Information**

A. Documents and or other information the Respondent seeks to submit under the terms of the Protective Order as "~~Respondent Designated Confidential Information~~" shall in all cases be marked on each page with Bates numbers and the word "Confidential". Each document shall have a full page, opaque paper cover sheet affixed identifying the document by its first page Bates number and indicating its total pagination. Stamping or marking of a document will be done in a manner so as not to interfere with the legibility of any of the contents of the Document.

The cover sheet shall prominently display the centered large print heading: "Submitted Protective Order Protocol – Limited Access".

Under the described heading, the cover sheet should have a grouping of 3 statements preceded by boxes susceptible to being checked off, as follows:

- Respondent Designated Confidential Information
- All Party Agreed Confidential Information
- Adjudged Confidential Information

Under the grouping of 3 statements described above, and separated by a vertical space of at least 2 inches, should be a second heading in large type: "Access/Distribution Limits Proposed by Respondent".

Immediately under that heading should appear the Respondent's proposed restrictions in detail: Thus, "Standard Protective Order Confidential Information Restrictions" will be a typical entry for general protections of confidential materials. A separate more restrictive requested limitation: "Additional Restrictions on Charging Party Access" would raise different issues. If neither choice is applicable, the correct proposed restriction on use of the information should be entered in lieu of one of the described entries

B. For each document that the Respondent designates as Respondent Designated Confidential Information and submits for protection under the Protective Order, the Respondent will, contemporaneously with its submission, provide the General Counsel and the Charging Party with one of the following disclosures, to allow the General Counsel and the Charging Party to understand the nature and general content materials involved and the limitations on disclosure and use requested by Respondent:

1. an FRCP log,
2. a redacted document,
3. a modified document
4. conditional disclosure of the document at issue, disclosed to the other two parties only for the purpose of a confidential status determination under the Protective Order, and therefore conditionally released subject to a final ruling on the Respondent's assertion of confidential protections under the Protective Order,
5. an asymmetrical disclosure of the document to the General Counsel and another form of disclosure to the Charging Party,
6. other reasonable means of apprising the Charging Party and the General Counsel of the maximum amount of information relevant to the documents status consistent with maintaining proper confidentiality.

The Respondent shall also submit to the other parties a showing of good cause setting forth the reason as to why the document or information must be treated as Confidential Information, as defined herein.

### **III. Disputes Regarding Designation of Confidential Information**

A. The Charging Party or the General Counsel may challenge the Respondent's designation of any document as Designated Confidential Information by the following procedure: If the Charging Party and/or the General Counsel object to the Respondent's designation of a document as Confidential Information, the Charging Party and/or the General Counsel (hereinafter "the Objecting Party") shall serve a written notice of the dispute upon the other Party/Parties within sixty (60) days of receipt of notice from the Respondent that it has completed production in compliance with relevant portions of subpoena, all Parties shall, within five (5) business days of receipt of the written notice of the dispute, confer or attempt to confer with each other in a good faith effort to resolve the dispute by all party agreement respecting the document or information at issue. In the event that the dispute is not resolved through such conference, the Objecting Party may thereupon move for a ruling from the Administrative Law Judge on all disputed designations.

B. If the Respondent produces additional documents designated Confidential Information after it has provided its original notice as described above, the Respondent will repeat the disclosure and identification protocols described above, The Charging Party or the General Counsel may challenge Disclosing Party's designation of any such document as Confidential Information pursuant to the same procedure.

C. This Protective Order does not modify the factual and legal standards to establish "good cause" for applicability of this Order to a Designated Confidential document based on a showing that a) the Document in fact constitutes confidential, proprietary, and/or trade secret financial, personal, business, or technical information that the Disclosing Party maintains in confidence in the ordinary course of business, and b) disclosure of the Document will cause specific financial and/or competitive harm to the Disclosing Party.

D. Where there is any dispute pending regarding the designation of records or documents as Confidential Information at any stage of the procedures set forth in this Protective Order, the disputed matter and all parties' filings associated therewith shall be treated as Confidential Information and subject to this Order until final resolution of the dispute under the Protective Order.

### **IV. Restrictions on Use of Confidential Information**

A. The Administrative Law Judge shall determine the appropriate limitations and restrictions that will be placed on the disclosure, use and sharing of confidential

information under this Protective Protocol without limit to the power, authority and discretion possessed by the administrative law judge in these particulars under the statute, Board rules and decisional law. Determinations and establishment of limits as described are fact and context intensive and may require document by document consideration in some circumstances. The discretion of the judge in determining the appropriate restrictions respecting a particular confidential document will not be limited to those sought by the Respondent or proposed by the other parties.

B. Only Qualified Persons may have access to agreed upon or adjudicated Confidential Information and to Respondent Designated Confidential Information unless and until such information is finally agreed or adjudicated not to be confidential. Confidential Information shall be controlled and maintained by the Parties in a manner that precludes access by any person not entitled to access under this Protective Order.

C. Confidential Information shall be used only for the purpose of litigating the Board Proceeding or any Related Federal Court Proceeding and not for any other purpose whatsoever.

D. The Parties shall take all reasonable steps to minimize disruptions to the Board Proceeding and any Related Federal Court Proceeding, and to minimize limitations on public access to the Proceeding resulting from the use of Confidential Information, however nothing in this Order shall be construed to limit in any way the right of the Respondent to use its own documents and information, including Confidential Information, for any purpose separate from the Board Proceeding and any Related Federal Court Proceeding.

E. In placing special restrictions on the disclosure and use of confidential information under the Protective Order, the Administrative Law Judge will act with the full range of discretion under the FRCP as adopted and allowed by Board rule and decision and such discretion may be applied on his own motion or in response to party motion in resolving disputes under the Protective Order.

#### **V. Confidential Information Placed Under Provisional Seal of Record at Hearing**

A. Immediately preceding any Party's introduction into the record of exhibits or filing of any Document containing Confidential Information during the Board Proceeding, the introducing party shall notify the administrative law judge and the other parties of that fact. Any party may then move the Administrative Law Judge under this Protective Order, applying the appropriate legal standards for sealing documents in NLRB unfair labor practice proceedings, for an order placing such materials under seal and state the reasons therefore. Upon such motion, the other parties shall state on the record whether they agree to or oppose the motion. The Administrative Law Judge shall then order, without making any further findings, that the material may be introduced into

evidence or, in the event the document is in a court filing, may be submitted by the filing Party, in either case under provisional seal.

B. Immediately upon any party's belief that a document or material designated as confidential under the Protective Order will be or may likely be referred to in open court in contravention of the Protective Order, the party holding such belief should notify the administrative law judge and the other parties. Upon motion by any party, the hearing room in the Board Proceeding shall be cleared of all individuals other than Qualified Persons and essential personnel such as court reporters and security officers when witnesses testify or fairly are expected to testify in a manner revealing confidential information. The portions of the official transcripts of proceedings taken while the hearing room is cleared pursuant to such order shall also be placed under provisional seal.

C. Final adjudication of any and all motions to permanently seal such provisionally sealed filings, exhibits and transcripts of proceedings shall be deferred by the Administrative Law Judge until the conclusion of the evidentiary stage of the hearing. Such adjudication will be part of the case and will be conducted on the record. The protocols respecting sealing of the transcript, exhibits and filings will also apply to this stage of the proceedings.

#### **VI. Confidential Information Placed Under Permanent Seal at Conclusion of Hearing**

A. At the closure of the hearing in the Board Proceeding, pursuant to such schedule as the Administrative Law Judge shall direct, the Respondent or any other party may file with the Administrative Law Judge a motion and any supporting brief to place under permanent seal, under the appropriate standard, any filings, exhibits and transcript excerpts containing Confidential Information that were earlier provisionally sealed under this Protective Order. Opposing parties shall submit briefs in response to the moving party's motion. To the extent that any such motion, affidavit, brief or other filing contains, quotes, or summarizes Confidential Information, it shall be filed under provisional seal and may be the subject of a motion to permanently seal the material at the conclusion of the hearing.

B. If, at any time, a non-Party seeks to intervene to challenge a party's motion to place portions of the record under seal, and if the request for intervention is granted, the Administrative Law Judge shall resolve the intervenor's challenge at the same time and pursuant to the same procedure applicable to the parties.

C. The Administrative Law Judge shall issue a written or on record oral order in response to any motion or motions to permanently seal elements of the record that resolves in uncontested as well as disputed motions to permanently seal exhibits, filings and transcript excerpts in the permanent seal motion. Any Documents or

transcript excerpts that were provisionally sealed under this Confidential Order but are not listed in any motion for permanent seal shall be ordered unsealed.

D. If any party seeks review of a ruling by the Administrative Law Judge that unseals an earlier provisionally sealed exhibit, filing, or transcript excerpt, any such material shall remain provisionally sealed pending the resolution of the review.

## **VII. Subpoena by Other Courts or Agencies**

If another court or administrative agency subpoenas or orders production of Confidential Information that a party has obtained in the Board Proceeding, the party that has received the subpoena or order shall notify the Disclosing Party of the issuance of such subpoena or order as soon as possible, but in no event later than three (3) days after receiving the subpoena or order, and in any event before the date of production set forth in the subpoena or order. The Respondent may then notify the person receiving the subpoena of the Respondent's intent to intervene to resist the subpoena. Should the Respondent give notice of such intent, the person receiving the subpoena shall take steps reasonable and necessary to withhold production while the Respondent's motion is pending. Provided, however, that nothing in this Order shall be construed to require a party to violate or refuse to comply with valid court orders of any court, or with the rules of procedure of any court.

## **VIII. Freedom of Information Act ("FOIA") Requests**

A. The General Counsel agrees to promptly notify the Respondent of any FOIA request it receives seeking the disclosure of Confidential Information in order to permit the Respondent the opportunity to explain why such records should not be disclosed.

B. The Acting General Counsel agrees that any information marked by the Respondent as Confidential Information pursuant to Section II-A above shall be treated by the Agency as triggering the procedures of Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4).

C. General Counsel will not disclose any Confidential Information in response to a FOIA request without first providing the Respondent written notice at least 10 business days in advance of the proposed disclosure of such information. Pursuant to the FOIA, in the event of such notice, the Respondent shall have the right to file a written statement explaining why the information comes within Exemption 4, and to object to any disclosure. If, after consideration of the Respondent's objections, the General Counsel makes an ultimate disclosure determination, the General Counsel acknowledges that the Respondent may file a lawsuit seeking to prevent the disclosure of the asserted Confidential Information. In this regard, the Acting General Counsel will follow the process described in Section 102.117 of the Board's Rules and Regulations. If the Respondent files suit to enjoin disclosure of Confidential Information, the Board will not disclose such Documents pending the final disposition of that lawsuit.

## **IX. Termination of the Proceeding**

A. Within 30 days after the final conclusion of the Board Proceeding and any Related Federal Court Proceeding including, without limitation, any judicial review, all materials found confidential under this Protective Order and which have not been made part of the record before the Board, shall be returned to counsel for the Respondent. Alternatively, at the option of the party in possession, all materials found confidential under the Protective Order and which have not been made part of the record before the Board, shall be destroyed and the Respondent notified in writing of that fact.

B. Following termination of the Board Proceeding and all related federal court proceedings, the provisions of this Protective Order relating to the confidentiality of protected documents and information, including any final decision on the sealing of documents and testimony, shall continue to be binding, except with respect to documents or information that are no longer confidential.

## **X. No Waiver**

A. The inadvertent disclosure of privileged matter by the Respondent or its counsel shall not constitute a waiver of any applicable privilege. If the Respondent inadvertently discloses any matter it claims to be covered by a privilege, it shall give notice promptly after discovery of the inadvertent disclosure that the matter is privileged. Upon receipt of such notice, if the person to whom such information was disclosed seeks to challenge the claim of privilege or lack of waiver, the matter shall be submitted to the Administrative Law Judge under the terms of this Protective Order.

B. Disclosure of Confidential Information pursuant to the procedures set forth in this Protective Order does not constitute a waiver of any trade secret or any intellectual property, proprietary, or other rights to, or in, such information. It is expressly acknowledged that no such rights or interests shall be affected in any way by production of subpoenaed material designated as containing Confidential Information in the Board Proceeding.

## **XI. Rights Reserved**

A. Nothing in this Protective Order shall be construed as a waiver of the right of any Party to object to the production of documents on the grounds of privilege or on other grounds not related to the confidentiality of the Documents.

B. Nothing in this Protective Order shall be construed as a waiver by any Party of any objections that might be raised as to the admissibility at hearing or trial of any proposed evidentiary materials.

C. Nothing in this Protective Order is intended to or shall act to change or modify the substantive law respecting FRCP 26(c) or other rules and controlling case law respecting confidential documents.

#### **XII. Modification**

Nothing in this Protective Order shall prevent any party, or the Administrative Law Judge on his own motion, from seeking modification of this Protective Order.

#### **XIII. Duration**

This Order shall become effective upon its issuance. It shall remain in full force and effect until modified, superseded, or terminated by consent of the Parties and the General Counsel or by Order of the Administrative Law Judge or reviewing authority.

#### **XIV. Violations**

The Parties and Counsel for the Acting General Counsel may bring any claim of breach of the terms of this Protective Order before the Administrative Law Judge at any time, and the Administrative Law Judge will have and exercise his full authority to halt, ameliorate and remedy any sustained claim that a breach occurred which constituted conduct prejudicial to any Party.

#### **XV. Appeals to the Board**

Appeals to the Board from the Administrative Law Judge's rulings under this Protective Order shall be governed by Rule 102.26 of the Board's Rules and Regulations.

**SO ORDERED.**

Issued at San Francisco, California, this 22nd day of August, 2011.



Clifford H. Anderson  
Administrative Law Judge



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

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

**SERVICE OF: RULING ON RESPONDENT'S MOTION FOR CLARIFICATION**  
**RE: PROTECTIVE ORDER AND AMENDED PROTECTIVE ORDER**  
**BY JUDGE CLIFFORD ANDERSON DATED 8-22-2011**

**-BY REGULAR MAIL AND E-MAIL TO:**

Richard L. Ahern, Reg. Dir.  
[Richard.Ahern@nlrb.gov](mailto:Richard.Ahern@nlrb.gov)  
Mara-Louise Anzalone, Esq. for AGC  
[Mara-Louise.Anzalone@nlrb.gov](mailto:Mara-Louise.Anzalone@nlrb.gov)  
Peter Finch, Esq. for AGC.  
[Peter.Finch@nlrb.gov](mailto:Peter.Finch@nlrb.gov)  
Rachel Harvey, Esq. for AGC  
[Rachel.Harvey@nlrb.gov](mailto:Rachel.Harvey@nlrb.gov)  
NLRB REGION 19  
915 2<sup>nd</sup>. Ave., Rm 2948  
Seattle, WA 98174-1078

Richard B. Hankins, Esq.  
[rhankins@mcKennialong.com](mailto:rhankins@mcKennialong.com)  
Drew E. Lunt, Esq.  
[dlunt@mcKennialong.com](mailto:dlunt@mcKennialong.com)  
Alston D. Correll, Esq.  
[acorrell@mcKennialong.com](mailto:acorrell@mcKennialong.com)  
McKenna Long & Aldridge LLP  
303 Peachtree St., N.E., Suite 5300  
Atlanta, GA 30308-3265

Christopher Corson, General Counsel  
IAMAW  
9000 Machinists Place  
Upper Marlboro, MD 20772-2687  
[ccorson@iamaw.org](mailto:ccorson@iamaw.org)

Glen M. Taubman, Esq.  
[gmt@nrtw.org](mailto:gmt@nrtw.org)  
Matthew C. Muggeridge, Esq.  
[mcm@nrtw.org](mailto:mcm@nrtw.org)  
of NRTW Legal Defense Foundation  
8001 Braddock Road, Suite 600  
Springfield, VA 22160

William J. Kilberg, Esq.  
[wkilberg@gibsondunn.com](mailto:wkilberg@gibsondunn.com)  
Daniel J. Davis, Esq.  
[ddavis@gibsondunn.com](mailto:ddavis@gibsondunn.com)  
Paul Blankenstein, Esq.  
[pblankenstein@gibsondunn.com](mailto:pblankenstein@gibsondunn.com)  
Matthew D. McGill, Esq.  
[mmcgill@gibsondunn.com](mailto:mmcgill@gibsondunn.com)  
Eugene Scalia, Esq.  
[escalia@gibsondunn.com](mailto:escalia@gibsondunn.com)  
Brenda Russel = asst.  
[brussel@gibsondunn.com](mailto:brussel@gibsondunn.com)  
Gibson Dunn & Crutcher LLP  
1050 Connecticut Ave., N.W.  
Washington, D.C. 20036-5306

Lawrence R. Schwerin  
[Schwerin@workerlaw.com](mailto:Schwerin@workerlaw.com)  
David Campbell, Esq.  
[Campbell@workerlaw.com](mailto:Campbell@workerlaw.com)  
Carson Glickman-Flora, Esq.  
[flora@workerlaw.com](mailto:flora@workerlaw.com)  
Robert L. Lavitt, Esq.  
[lavitt@workerlaw.com](mailto:lavitt@workerlaw.com)  
Jennifer Robbins, Esq.  
[robbins@workerlaw.com](mailto:robbins@workerlaw.com)

Sean Leonard, Esq.  
[leonard@workerlaw.com](mailto:leonard@workerlaw.com)  
Schwerin, Campbell, Barnard, Iglitzin &  
Lavitt, LLP  
18 West Mercer Street, Suite 400  
Seattle, WA 98119

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

REGULAR MAIL ONLY:

**Tom Wroblewski, President**  
**Jesse Cote Business Agent**  
**Machinists, DL 751**  
**9135 15<sup>th</sup> PI S**  
**Seattle, WA 98108-5100**

**The Boeing Company**  
**Attn: Mr. Douglas P. Kight, Esq.**  
**P.O. Box 3707, MS 13-08**  
**Seattle, WA 98124-2207**

**Office of the Executive Secretary**  
Les Heltzer, Exec. Secty.  
Gary Shinnars, Assist. Exec. Secty

VIA E-MAIL

THIS COMMUNICATION IS INTENDED FOR THE SOLE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW.

Served by: Susan George. at 415 356-5255, August 22, 2011