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 RESPONDENT'S MOTION TO DISMISS AND MOTION TO STRIKE

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Pursuant to § 102.24 of the Board's Rules and Regulations, Counsel for the Acting General Counsel opposes the "Motion to Dismiss for Failure to State a Claim, or, in the Alternative, to Strike the Injunctive Relief Sought in ¶ 13(A) of the Complaint" (the "Motion") filed by Respondent The Boeing Company ("Respondent") on June 14, 2011. Respondent's Motion is premised on factual allegations based on a significant number of unsupported hearsay statements and exhibits, which cannot support a motion to dismiss.[1] To the contrary, as demonstrated below, the Complaint in this case readily meets notice pleading requirements to state a claim under well-established precedent under the National Labor Relations Act ("NLRA" or the "Act").

Respondent's alternative request that the Administrative Law Judge preemptively declare that the remedy sought is unavailable to the alleged discriminatees in this case is woefully premature, as the remedy requested is the standard remedy for the

[1] In this regard, it is noted that the Administrative Law Judge explicitly informed the parties that he did not wish for them to submit factual, as opposed to legal, analysis in their pre-trial briefs.

violations alleged and no record evidence has yet been adduced to support a claim that such a remedy is inappropriate on the facts of this case.

I. PROCEDURAL BACKGROUND

Paragraphs 6 and 9 of the Complaint allege that Respondent violated § 8(a)(1) of the Act by making coercive statements that it would remove or had removed work from bargaining units represented by International Associations of Machinists and Aerospace Workers, District Lodge 751, affiliated with International Associations of Machinists and Aerospace Workers (the "Union") because employees had struck, and by threatening or impliedly threatening that the bargaining units would lose additional work in the event of future strikes. Paragraphs 7, 8, and 10 of the Complaint allege that Respondent violated §§ 8(a)(3) and (1) of the Act by deciding to transfer a second 787 Dreamliner production line and a sourcing supply program for its 787 Dreamliner production from the bargaining units represented by the Union to its non-union site in North Charleston, South Carolina, or to subcontractors. Paragraph 13(a) of the Complaint seeks restoration of the *status quo ante* and requests as part of the remedy that Respondent be ordered to have bargaining-unit employees operate its second 787 Dreamliner production line in the State of Washington, utilizing supply chains maintained by the bargaining units in the Seattle, Washington, and Portland, Oregon, area facilities; and paragraph 13(b) of the Complaint states that other than as set forth in paragraph 13(a), 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.

In its Answer, Respondent essentially denies all allegations of paragraphs 6 through 10 of the Complaint and denies that the relief sought in paragraph 13(a) of the Complaint will not effectively cause it to shut down its assembly facility in North Charleston, South Carolina. In addition to denying these and other paragraphs of the Complaint, Respondent raises 14 affirmative defenses. Among other things, Respondent contends in its third affirmative defense that:

> [Respondent's] decision to place the second 787 assembly line in North Charleston was based upon a number of varied factors, including a favorable business environment in South Carolina for manufacturing companies like [Respondent]; significant financial incentives from the State of South Carolina; achieving geographic diversity of its commercial airline operations; as well as to protect the stability of the 787's global production system. [...] [Respondent] would have made the same decisions with respect to the placement of the second assembly line in North Charleston even if it had not taken into consideration the damaging impact of future strikes on the production of 787s.

Respondent further contends in its eighth affirmative defense that the remedy requested in the Complaint "would cause an undue hardship on [Respondent], its employees, and the state of South Carolina," and that "none of the complained of actions caused any hardship on any [of Respondent's] employees or the State of Washington." Thus, the pleadings leave numerous material issues in dispute.

II. RESPONDENT'S MOTION TO DISMISS SHOULD BE DENIED

A. The Legal Standard

The Board has adopted a system of notice pleading for its complaints. *Quanta*, 355 NLRB No. 217, slip op. at 2 (2010). This system is governed by § 102.15 of the Board's Rules and Regulations, which requires only that Complaints contain "(a) a clear and concise statement of the facts upon which assertion of jurisdiction by the Board is

predicated, and (b) a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed." As was aptly explained long ago:

> The sole function of the Complaint is to advise the respondent of the charges constituting unfair labor practices as defined in the Act that he may have due notice and a full opportunity for hearing thereon. The Act does not require the particularity of pleading of an indictment or information, nor the elements of a cause like a declaration at law or a bill in equity. All that is requisite in a valid Complaint before the Board is that there be a plain statement of the things claimed to constitute an unfair labor practice that respondent may be put upon his defense.

NLRB v. Piqua Munising Wood Prods. Co., 109 F.2d 552, 557 (6th Cir. 1940). *See also American Newspaper Publishers Ass'n. v. NLRB*, 193 F.2d 782, 800 (3d Cir. 1951), *aff'd,* 345 U.S. 100 (1953); *The Artesia Cos., Inc.*, 339 NLRB 1224, 1226 (2003).

A Complaint cannot be dismissed for failure to state a claim upon which relief may be granted when the allegations of the Complaint, if true, set forth a violation of the Act. *Children's Receiving Home of Sacramento*, 248 NLRB 308, 308 (1980). In considering a motion to dismiss, "the Board construes the Complaint in the light most favorable to the General Counsel, accepts all factual allegations as true, and determines whether the General Counsel can prove any set of facts in support of his claims that would entitle him to relief." *Detroit Newspapers*, 330 NLRB 524, 524, n.1 (2000). There is a "powerful presumption against rejecting pleadings for failure to state a claim." *Robbins v. Wilkie*, 300 F.3d 1208, 1210 (10th Cir. 2002) (reversing district court's decision to dismiss RICO complaint for failure to state a claim). Granting a motion to dismiss is "a harsh remedy which must be cautiously studied, not only to

effectuate the spirit of the liberal rules of pleading but also to protect the interests of justice." *Morse v. Regents of University of Colorado*, 154 F.3d 1124, 1127 (10th Cir. 1998). Thus, in ruling on a motion to dismiss for failure to state a claim, it is not appropriate to look outside the pleadings themselves and consider additional facts alleged by the moving party. *Weiner v. Klais & Co., Inc.*, 108 F.3d 86, 88-89 (6th Cir. 1997).

To the extent Respondent has attached inadmissible facts and documents to its Motion, the Administrative Law Judge may appropriately consider the Motion under the Board's summary judgment standard. The Board has rejected any summary judgment procedure akin to the procedure set forth in Rule 56(e) of the Federal Rules of Civil Procedure, under which a moving party can set forth its version of the facts and the opposing party must admit or controvert those facts.[2] Because the Board's rules do not provide for pre-trial discovery (*KIRO, Inc.*, 311 NLRB 745, 746, n.4 (1993); *United States Postal Service,* 311 NLRB 254, 254 n.3 (1993), *Krieger-Ragsdale & Co., Inc.*,159 NLRB 490, 495 (1966), *enfd.,* 379 F.2d 517 (7th Cir. 1967), *cert. denied,* 389 U.S. 1041 (1968)), the Board has held that summary judgment proceedings are governed by the Board's Rules and Regulations, and not by the Federal Rules of Civil Procedure. *KIRO, Inc.,* 311 NLRB at 746. Under the Board's Rules and Regulations, a motion for summary judgment or dismissal must be denied where the pleadings indicate that there is a genuine issue of material fact. Board's Rules and Regulations § 102.24.

[2] Section 10(b) of the Act states that Board proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure "so far as practicable." Respondent's statement that "this tribunal is obligated to conduct this hearing" under the Federal Rules of Civil Procedure is an overstatement. (Motion to Dismiss at 10) To the extent that the pleading standards set forth in § 102.15 of the Board's Rules and Regulations differ from those set forth in Rule 8 of the Federal Rules of Civil Procedure, the Board's Rules and Regulations govern these proceedings.

Thus, it is well-settled that the General Counsel is not required to set forth precise facts through affidavits or other documentary evidence to show that a genuine issue for hearing exists. *KIRO, Inc.,* 311 NLRB at 746; *United States Postal Service,* 311 NLRB at 254 n.3. Instead, the General Counsel may rely upon the allegations in the Complaint, Respondent's denial of these allegations in its Answer, and general averments that factual issues exist requiring a hearing. *KIRO, Inc.,* 311 NLRB at 745-746, 745 n.3; *United States Postal Service,* 311 NLRB at 254, n.2. *Cf. Fox-Art Theatres,* 290 NLRB 885, 885 (1988) (where Respondent admits allegations and fails to state specifically the basis for disagreement with the backpay specification, summary judgment is appropriate). Based on these principles, and as discussed *infra*, summary judgment is wholly inappropriate in this case.

B. Disposition of this Case at This Early Stage is Inappropriate

In accordance with the requirements of § 102.15 of the Board's Rules and Regulations, the Complaint allegations are sufficient to put Respondent on notice of the specific "acts which are claimed to constitute unfair labor practices." Further, accepting all factual allegations to be true, these allegations are sufficient to support a claim for relief. *See Detroit Newspapers*, 330 NLRB at 524, n.7.

1. The Complaint's Independent § 8(a)(1) Allegations Clearly State a Claim

Paragraphs 6 and 9 of the Complaint allege that Respondent violated § 8(a)(1) of the Act by "ma[king] coercive statements to its employees that it would remove or had removed work from the Unit because employees had struck" and by "threatening or impliedly threatening that the Unit would lose additional work in the event of future strikes." Paragraph 6 of the Complaint enumerates five statements made on specific

dates and at specific locations, by admitted, named high level managers of Respondent, all of whom linked the decision regarding the location of work to past strikes or potential future strikes by unit employees.

Such statements, if proven, would clearly violate § 8(a)(1). *See, e.g., Detroit Newspapers*, 330 NLRB 524, 524, n.1 (2000). *See also General Electric Co.*, 215 NLRB 520, 520-21 (1974). Indeed, the Board has held that an employer violates § 8(a)(1) by threatening to withhold work opportunities because of employees' exercise of § 7 rights. *See, e.g., Dorsey Trailers, Inc.*, 327 NLRB 835, 851 (1999) (threat to close plant if employees went on strike), *enfd. in pertinent part,* 233 F.3d 831 (4th Cir. 2000); *Kroger Co.*, 311 NLRB 1187, 1200 (1993) (threat to put plan to build a new freezer facility on hold), *affd. mem.,* 50 F.3d 1037 (11th Cir. 1995). Further, employer "predictions" of loss of customers due to unionization or strike disruptions without any factual basis amount to unlawful threats. *See, e.g., Tawas Indus.*, 336 NLRB 318, 321 (2001) (no objective basis for prediction of loss of customers due to fear of strikes in the event that the employees' independent union affiliated with a particular international union).

The Respondent's claims based on *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969), are evidentiary claims that cannot be considered in a motion to dismiss. In *Gissel*, the Supreme Court defined the boundary between employer speech protected under § 8(c) of the Act and threats of reprisals violating § 8(a)(1) of the Act. The Court ruled that employer "predictions" of the consequences of unionization are privileged under § 8(c) only if they are "carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control[.]"

Id. As the Court further explained, "'threats of economic reprisal to be taken solely on [the employer's] own volition'" violate § 8(a)(1). *Id.* at 619 (citation omitted).

Respondent denies substantially all of the allegations of paragraphs 6 and 9 of the Complaint, specifically disputing whether those statements were "carefully phrased based on objective fact," and whether the statements concerned "demonstrably probable consequences beyond [Respondent's] control" (as opposed to actions taken on Respondent's own volition). *Gissel*, 395 U.S. at 618-19. Its assertions, however, are based on factual assertions and out-of-court statements outside the parameters of the Complaint. Hence, they provide no support for Respondent's Motion to Dismiss. As the record evidence will show, Respondent's statements, as alleged, were not based on consequences "beyond its control," but rather constituted threats of reprisal "to be taken solely on [Respondent's] own volition."

As the foregoing demonstrates, there is ample authority for concluding that Respondent's alleged unlawful statements linking decisions about the location of work to past strikes or potential future strikes by its Puget Sound unit employees interfered with employees' rights in violation of § 7 of the Act. Counsel for the Acting General Counsel therefore respectfully requests that Respondent's motion to dismiss the allegations concerning its violation of § 8(a)(1) of the Act for failure to state a claim be denied.

2. The Complaint Properly States that Respondent Has Discriminated Against Its Employees Based on Their Union and Other Protected Conduct

Respondent does not deny that it decided in October 2009 to operate a second final assembly line for its 787 Dreamliner using employees not represented by the

Union. Nor does Respondent deny announcing this decision to its entire workforce, or that it linked that decision to the prior exercise by certain of its employees of their right to strike. Instead, Respondent argues that the Complaint fails to adequately state a claim only because it fails to allege specific harm that its action will have on its workforce. (Motion to Dismiss at 3, 18-19).

As a preliminary matter, the Board's notice pleading requirements simply do not require a delineation of the specific effects of Respondent's conduct. *See Piqua Munising Wood Prods. Co.*, 109 F.2d at 557. Further, even if the full effects of Respondent's decision are not wholly felt at this time because the decision has not yet been completely implemented, Board law makes clear that a discriminatory decision about where to place work may alone constitute discrimination with respect to unit employees' terms and conditions of employment in violation of § 8(a)(3), even where there has been no actual financial loss, and even where there has been no *immediate* impact on the discriminatees. *Pittsburg & Midway Coal Mining Co.*, 355 NLRB No. 197 (2010); *Adair Standish Corp.*, 290 NLRB 317, 318-19 (1988), *enfd. in pertinent part,* 912 F.2d 854 (6th Cir. 1990).

For example, the Board has found that an employer's diversion of work from a newly organized plant to a non-union plant for unlawfully motivated reasons violated § 8(a)(3) of the Act even though there was no immediate impact on unit employees. *Adair Standish Corp.*, 290 NLRB at 318-19 (1988). In *Adair Standish*, the employer refused to take delivery of a new press at a newly organized plant and instead installed the press at a nonunion plant for unlawful reasons. *Id.* The Board found a § 8(a)(3)

violation, reasoning that "diversion of the new press from [the newly organized plant] could reasonably result in diversion of new work from [that plant]." *Id.* at 319.

The claim clearly alleged in the Complaint is that, but for the Respondent's discriminatory motive, the second final assembly line and supply lines work would have been assigned to the Unit employees. At trial, the Acting General Counsel will demonstrate that, as in *Adair Standish*, by placing that work in South Carolina, work that Unit employees otherwise would have performed, is being diverted to non-Unit employees in retaliation for their exercise of § 7 rights and to discourage them from exercising these rights in the future. Thus, Respondent's decision deprives bargaining Unit employees of opportunities to work on what Respondent touts as its "latest generation of commercial aircraft, using lightweight composite materials to create one of the most fuel-efficient, technologically advanced passenger planes in the world." (Motion to Dismiss at 4). Even assuming for the sake of argument that there has not yet been a financial impact on any Unit employee or prospective Unit employee, the fact that the employees have not yet experienced a financial impact is no defense for a violation of § 8(a)(3). *See Pittsburg & Midway Coal Mining Co.*, 355 NLRB No. 197, slip op. at 5, n.8.

3. The Complaint Is Consistent with Supreme Court Precedent

As noted above, the Complaint alleges that Respondent's discriminatory actions were undertaken because of its employees' exercise of their § 7 rights and also that those actions were inherently destructive to their § 7 rights. Respondent essentially argues that, as a matter of law, its consideration of the potential for future strikes in deciding where to place the second final assembly line and supply lines was privileged

under the United States Supreme Court's decisions in *American Ship Building Co. v. NLRB*, 380 U.S. 300 (1965) (permitting preemptive lockout), and *NLRB v. Brown Food Store*, 380 U.S. 279 (1965) (permitting preemptive lockout and use of temporary replacements in the face of a whipsaw strike). Respondent cites those cases for the proposition that employers may legitimately blunt the effectiveness of anticipated strikes. (Motion to Dismiss at 22). However, the holdings of *American Ship Building* and *Brown* – both of which involved employers' actions taken in response to the actual likelihood of an imminent strike – cannot be extended to legitimize any actions by employers to secure themselves against wholly speculative future strikes.

Indeed, the Board has rejected attempts by employers to argue for such extensions. For example, in *National Fabricators*, 295 NLRB 1095, 1095 (1989), *enfd*, 903 F.2d 396 (5th Cir. 1990), *cert. denied,* 498 U.S. 1024 (1991), the Board rejected an employer's attempt to use *Brown* and other lockout cases to justify the layoff of employees it believed were likely to honor a picket line in the future. *Id.* The Board reasoned that disfavoring employees who would engage in union activities violated § 8(a)(3). *Id.* Thus, *American Ship Building* and *Brown* are inapposite here, as Respondent's actions were taken in retaliation for past strikes and to secure itself against wholly speculative future strikes.

Further, Respondent is simply wrong when it argues no § 8(a)(3) violation can be found because the Complaint does not allege facts that would establish that it harbored animus toward employees' protected activities. The allegations of paragraphs 6 and 9 of the Complaint, if accepted as true, would be sufficient to establish animus toward employees' union activities as well as independent violations of § 8(a)(1). Moreover,

Respondent's "inherently destructive" conduct, once proven, will itself establish discriminatory intent. *NLRB v. Erie Resistor Corp.*, 373 U.S. 221 (1963).

4. The Alleged Contractual Waiver Does Not Privilege Conduct that Violates § 8(a)(3)

Respondent argues that the Complaint must be dismissed because a clause in the parties' collective bargaining agreement concerning Respondent's right to decide where to perform work precludes a finding that its placement of the second final assembly line and supply lines in South Carolina violated § 8(a)(3) as a matter of law. Such a claim amounts to an improper attempt to seek dismissal of the Complaint for failure to state a claim based on facts beyond those contained in the Complaint. Further, to the extent Respondent claims that this language privileges it to base work location decisions on discriminatory motives, the Acting General Counsel vigorously disputes that claim.

Respondent's assertion that the contractual waiver permits it to decide the location of work without bargaining with the Union does not defeat the Complaint. It is settled law that "[an employer's] bargaining obligations to the Union are distinct[3] from its legal duty not to discriminate against strikers...the legal theories are fundamentally different." *Peerless Pump Co.*, 345 NLRB 371, 374 (2005). In fact, the Supreme Court has distinguished conduct that, while removed from § 8(a)(5)'s protection, nonetheless will violate § 8(a)(3) if "motivated by antiunion animus." *First National Maintenance Corp.*, 452 U.S. 666, 682 (1981) (*citing Textile Workers v. Darlington Co.*, 380 U.S. 263

[3] It is for this reason that cases that rely on an analysis of § 8(a)(5) obligations are irrelevant to complaints containing only §§ 8(a)(1) and 8(a)(3) charges. *See NLRB v. Adco Electric,* 6 F.3d 1110, 1116 (5th Cir. 1993), *enforcing Adco Electric,* 307 NLRB 1113, 1116 (1992) (duty to bargain irrelevant where case alleges discrimination because of protected concerted activities; there is no refusal to bargain allegation).

(1965)). It is also well established that an "employer cannot exercise contractual rights to punish employees for protected activity." *RGC (USA) Mineral Sands, Inc. v. NLRB*, 281 F.3d 442, 450 (4th Cir. 2002); *Reno Hilton Resorts v. NLRB*, 196 F.3d 1275, 1281 (D.C. Cir. 1999).

Thus, a contractual privilege to decide where to place the second final assembly line and the supply lines without bargaining would not privilege Respondent to place the work in South Carolina for the discriminatory reasons alleged in the Complaint. Counsel for the Acting General Counsel respectfully requests that the Administrative Law Judge deny Respondent's Motion to Dismiss the allegations that Respondent violated § 8(a)(3) of the Act for failure to state a claim for which relief can be granted.

III. RESPONDENT'S MOTION TO STRIKE SHOULD BE DENIED

Respondent has requested that the Administrative Law Judge "strike" paragraph 13(a) of the Complaint, which seeks an order requiring Respondent to have the bargaining-unit employees operate the second final assembly line in the State of Washington, utilizing supply lines maintained by bargaining-unit employees in Seattle, Washington, and Portland, Oregon. Respondent has not (and cannot) provide any cogent rationale for expecting the Administrative Law Judge to preemptively declare that the remedy sought is inappropriate. Striking a portion of the remedy sought by the Acting General Counsel before any evidence has been taken and before any decision on the merits of the case is manifestly inappropriate. Indeed, Respondent's insistence that the remedy sought is "profoundly unjust" is frankly puzzling; surely, in order to determine how just or otherwise appropriate the requested remedy may be requires an adjudication of the underlying dispute.

Regardless of Respondent's arguments to the contrary, § 10(c) of the Act authorizes the Board to order "such affirmative action ... as will effectuate the policies of [the] Act." The Supreme Court has explained that "the relief which the statute empowers the Board to grant is to be adapted to the situation which calls for redress." *MacKay Radio & Telegraph Co.*, 304 U.S. 333, 348 (1938). In other words, the Board has broad discretion to craft an appropriate remedy based on the facts of each case. *Excel Case Ready*, 334 NLRB 4, 5 (2001). Once a complaint has issued, the authority to craft a remedy rests with the Board, and the Board's Administrative Law Judges have only limited authority to restrict the presentation of evidence in support of particular remedies, including remedies sought by parties other than the General Counsel.[4] *Kaumagraph Corp.*, 313 NLRB 624, 624-25 (1994); *Sunland Construction Co.*, 311 NLRB 685, 706 (1993). Accordingly, "the issue of whether the sought remedy or any other remedy is appropriate 'is best determined following a hearing.'" *Sutter Lakeside Hosp.*, JD(SF)-20-94 at 1 (1994) (describing the basis for an Administrative Law Judge's decision to deny a motion to strike the remedy sought in a complaint).

Moreover, in cases involving discriminatory transfers of operations, the Board's usual practice is to require as a remedy the restoration of the *status quo ante*. In fact, the remedy sought by the Acting General Counsel here is the *standard* remedy for a case such as this. *See Lear Siegler, Inc.*, 295 NLRB 857, 861 (1989). Thus, in the instant case, if the second assembly line would have been located in the State of Washington, with its supply lines in Seattle, Washington, and Portland, Oregon, but for

[4] To the extent the Board has delegated to the Administrative Law Judge the right to recommend remedies, that authority is limited to expanding the remedy to comport with recommended findings of violations, and does not authorize preempting the Board's consideration of an issue. *See, e.g., Redd-I, Inc.*, 290 NLRB 1115, 1118-19 (1988).

Respondent's alleged discriminatory conduct, restoration of the second final assembly line and the supply lines in those locations is presumptively an appropriate remedy.

Respondent may undertake at trial to demonstrate that such a requested remedy should be denied because it would be unduly burdensome. *See Lear Siegler,* 295 NLRB at 861. Respondent, however, bears the evidentiary burden of proving burdensomeness. *See, e.g., George A. Hormel & Co.*, 301 NLRB 47, 47 (1991). It obviously cannot carry that burden on a motion to dismiss before the adducement of any evidence, and its unsupported assertions of burdensomeness certainly do not warrant striking the requested remedy.[5] Rather, such claims must be litigated in an evidentiary hearing, so that the Board can decide the appropriate remedy given the facts of the case, as required under § 10(c) of the Act. *Lear Siegler*, 295 NLRB at 861. Moreover, Respondent bears the burden of proving its affirmative defense that the remedy sought is inappropriate.

Respondent has cited no precedent (nor has Counsel for the Acting General Counsel located any) in which an Administrative Law Judge (or the Board) has restricted the remedy sought before a decision has been made with respect to the merits of the underlying unfair labor practice charge. This is unsurprising, considering the common-sense advisability of adducing facts and making a decision on the merits of a charge before any remedies are foreclosed. Counsel for the Acting General Counsel

[5] To the extent Respondent disagrees that it would have placed the line in Washington, even absent its consideration of its employees' union and other protected conduct, that is a claim going to the merits of the Complaint, to which it may adduce any relevant supporting evidence at trial. The Respondent cannot, at this stage, however, legitimately argue that the Administrative Law Judge determine the scope and form of the correct remedy, when that judgment requires weighing the evidence that the Respondent has not provided.

therefore respectfully requests that Administrative Law Judge Anderson deny Respondent's ill-conceived motion to strike paragraph 13(a) of the Complaint.

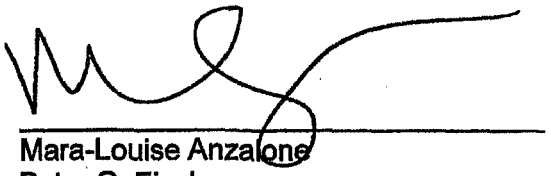
IV. CONCLUSION

For the reasons set forth above, the Complaint fully complies with the Board's notice pleading requirements, and its allegations, when borne out by the evidence, are sufficient to establish a violation of the Act. Dismissal of the Complaint for failure to state a claim is therefore inappropriate. Further, striking the portion of the remedial relief requested by the Acting General Counsel at this stage of the proceedings, when no evidence has yet been adduced, as requested by Respondent, would also be inappropriate in view of the Board's duty to craft a remedy based on the facts of the case. Counsel for the Acting General Counsel therefore respectfully requests that the Administrative Law Judge deny Respondent's motion to dismiss for failure to state a claim and its motion to strike a portion of the remedial relief sought by the Acting

General Counsel. Counsel for the Acting General Counsel further request that an evidentiary hearing regarding all matters raised in the Complaint in this matter proceed.

DATED at Seattle, Washington, this 21st day of June, 2011.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of Acting General Counsel's Opposition to Respondent's Motion to Dismiss and Motion to Strike was served on the 21st day of June, 2011, on the following parties:

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