

**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**

**THE ACTING GENERAL COUNSEL'S RESPONSE TO BLOOMBERG L.P.'S
REQUEST FOR MODIFICATION OF THE PROTECTIVE ORDER**

By letter dated August 22, 2011, Bloomberg L.P. ("Bloomberg") requested that the Administrative Law Judge modify §V.B. of the Protective Order for this case. The Administrative Law Judge has provided the parties with the opportunity to respond to Bloomberg's request.¹

Section V.B. of the Protective Order² provides:

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

¹ Although Bloomberg has not formally moved to intervene, and Bloomberg's "request" is not styled as a formal motion to modify the Protective Order, the Acting General Counsel recognizes that Bloomberg has – by its letter e-filed with the Board and served on all parties – arguably moved to intervene in the Board proceeding for the sole purpose of seeking a discrete modification of the Protective Order.

² The language of §V.B. in the Protective Order issued on August 12 is the same as the corresponding language in the Amended Protective Order issued on August 22.

transcripts of proceedings taken while the hearing room is cleared pursuant to such order shall also be placed under provisional seal.

(Emphasis added).

Bloomberg requests that the Administrative Law Judge modify the Protective Order to limit a Party's obligation to give the Administrative Law Judge and the other parties notice under this provision only to situations where the notifying Party believes that Confidential Information may or is likely to be "disclosed," rather than merely "referred to," in open court. Bloomberg asserts that such a "minor, but important, change will assure that the press, and therefore the public, continue to access the proceedings in this important manner."

The Acting General Counsel understands and agrees with Bloomberg's underlying concerns on this discrete issue. Premature and unnecessary clearance of the hearing room in this – or any Board proceeding – should be avoided whenever possible. See, e.g., §101.10(a) of the National Labor Relations Board's Rules and Regulations ("Except in extraordinary situations the hearing is open to the public"). The Acting General Counsel respectfully submits, however, that Bloomberg's concerns are directly addressed in the latter portion of §V.B. that is italicized above and, therefore, the discrete modification requested by Bloomberg appears unnecessary.

Bloomberg apparently reads §V.B. as permitting closure of the hearing room when a party "notifies" the Administrative Law Judge that it is "likely" that someone will or may likely "refer" to Confidential Information. However, notice of the possibility or likelihood that Confidential Information will be "referred to" merely triggers any Party's right to move the Administrative Law Judge to consider clearing; actual clearing of the hearing room occurs only at the point "when witnesses testify or are fairly expected to

testify in a manner revealing confidential information.” Thus, while the issue of whether the hearing room should be cleared to avoid the inappropriate disclosure of Confidential Information might ripen when the possibility or likelihood of a “reference to” Confidential Information comes to light, “reference to” Confidential Information, alone, does not instigate clearance of the hearing room. Rather, as Bloomberg would have it, the Protective Order only requires clearance of the hearing room when witnesses testify, or are likely to testify, in a manner that will disclose Confidential Information.

For the above reasons, the Acting General Counsel submits that the Protective Order, as written, adequately addresses Bloomberg’s important concern.³ Accordingly, Bloomberg’s requested modification appears to be unnecessary.

Respectfully submitted on this 26th day of August, 2011.



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³ Presumably, Bloomberg retains the right to file a motion to intervene if, during the course of the litigation of this case, it believes §V.B. has been improperly invoked or enforced.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Acting General Counsel's Response to Bloomberg L.P.'s Request for Modification of the Protective Order was served on the 26th day of August, 2011, on the following parties:

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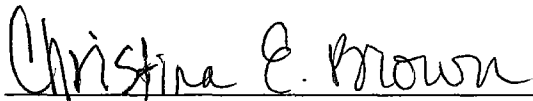
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