

**United States Government**  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, DC 20570  
[www.nlr.gov](http://www.nlr.gov)

May 19, 2011

The Honorable John Kline, Chairman  
Committee on Education and the Workforce  
House of Representatives  
2181 Rayburn House Office Building  
Washington, DC 20515-6100

The Honorable Phil Roe, Chairman  
Subcommittee on Health, Employment,  
Labor and Pensions  
Committee on Education and the Workforce  
House of Representatives  
2181 Rayburn House Office Building  
Washington, DC 20515-6100

Dear Chairman Kline and Chairman Roe:

I am responding to your letter, dated May 5, 2011, to Acting General Counsel Lafe E. Solomon concerning the complaint issued on April 20, 2011, against The Boeing Company ("Boeing").

The concerns articulated by you appear to be based upon certain statements made by Regional Director Richard Ahearn in response to a reporter's questions about the charge filed against Boeing which had been published by the *Seattle Times* on June 4, 2010. During the course of this interview, Regional Director Ahearn was quoted as saying that there is no "bright line here" and that "it would have been an easier case for the union to argue if Boeing had moved existing work from Everett, rather than placing new work in Charleston." He also added that "an initial ruling is weeks away." You appear to construe the statements quoted in this article as an official determination on the merits of this charge. Moreover, because the complaint, which was issued ten months after the interview, alleges that Boeing "transferred" work from Washington State to South Carolina, you question this 'pivot in position' by NLRB officials and the 'unusual timing' of the issuance of the complaint. Your specific requests for information and our responses are set forth below.

1. A description of what transpired between June 2010 and April 2011 that led the NLRB to alter its opinion in this matter.

As explained more fully below, there are no 'inconsistencies' nor a 'pivot in position' surrounding the April 20, 2011 complaint.

The underlying charge, which was filed on March 26, 2010, by the International Association of Machinists and Aerospace Workers District Lodge No 751 ("Machinists"), was thoroughly investigated by the Seattle Regional Office. At the time when Regional Director Ahearn's comments to a reporter's questions were reported in the *Seattle Times*, the Regional Office was in the midst of the investigation and no decision on the merits had been made. Indeed, following publication of Regional Director Ahearn's remarks, the parties continued to provide their evidence and arguments to the Seattle Regional office as part of that ongoing investigation. On multiple occasions between June 24 and August 25, 2010, the Machinists and Boeing each submitted evidence, documents, and/or statements to the Regional Office in support of their respective positions.

Upon completion of that investigation, on August 31, 2010, Regional Director Ahearn submitted the case to the Division of Advice in Washington, DC, for a determination on the merits of the charge, consistent with the long established practice followed by the NLRB Regional Offices in cases of national significance. The case was then thoroughly reviewed by the Division of Advice.

Recognizing the significance of this matter to both parties, on October 19, 2010, Acting General Counsel Lafe Solomon took the noteworthy step of inviting Boeing to come to our headquarters office to provide an oral presentation about its position on all issues to him. On December 15, 2010, Boeing made such a presentation. Boeing thereafter submitted additional evidence and position statements to the Acting General Counsel. The Acting General Counsel also invited the Machinists to provide a presentation. They made their oral presentation on January 19, 2011, and thereafter submitted additional support for their position in writing.

Beginning in late January 2011, and continuing through late March 2011, Acting General Counsel Solomon encouraged both parties to negotiate a resolution of this matter. When these attempts failed, Acting General Counsel Solomon decided to issue a complaint based on a careful consideration of the issues and all the evidence and arguments submitted by the parties. Regional Director Ahearn issued the complaint on behalf of the Acting General Counsel on April 20, 2011.

I note that Section 8(a)(3) of the National Labor Relations Act, which is alleged to have been violated in this case, prohibits employers from discriminating against employees in order to encourage or discourage membership in a labor organization. The U.S. Supreme Court has approved the NLRB's *Wright Line* rule in these cases. Pursuant to that rule, the General Counsel has the initial burden of persuading the trial judge by "a preponderance of evidence" that anti-union animus contributed to the employer's adverse action. The employer then has the opportunity to rebut the conclusion that it violated Section 8(a)(3) of the Act by proving, by a preponderance of the evidence, that it would have taken the adverse action even if the employees had not engaged in protected activity. *NLRB v. Transportation Mgt. Corp.*, 462 U.S. 393 (1983). After the

General Counsel and the employer have both presented evidence, the trial judge must carefully assess and evaluate often conflicting evidence and draw reasonable inferences from the record. *Radio Officers v. NLRB* (A.H. Bell S. S. Co.), 347 U.S. 17 (1954). Thus, consideration of whether an employer violates Section 8(a)(3) requires a careful and balanced assessment of whether protected conduct of employees was a motivating factor in the employer's decision and whether the employer can affirmatively introduce evidence to demonstrate that the challenged action would have taken place regardless of the employees' protected activity.

Regional Director Ahearn's remarks in June 2010 merely reflect an appropriate appreciation of the delicate balancing and careful scrutiny of often conflicting evidence. They reflected his understanding that resolution of cases alleging unlawful discrimination do not turn on disputed legal principles, but on legal inferences to be drawn from an often voluminous factual record. In that regard, he noted that there is no "bright line" in the law that makes it immediately clear whether an action was illegal retaliation or a legitimate strategy when there are myriad facts and evidence to be carefully evaluated, as here. Further, his comments about harm being more readily apparent when a case involves existing, rather than new, work reflects a logical conclusion when comparing that which is tangible from that which may not be as evident. Notably, as indicated by the parties' active participation in the Region's investigation following the report of Regional Director Ahearn's aforementioned remarks, there was no confusion as to his meaning; their participation affirmed the understanding and reality that there had been no determination on the merits of the charge at that time.

As to Regional Director Ahearn's estimate of the timing of an initial determination, that determination was made months after Regional Director Ahearn's estimated time frame because the Acting General Counsel provided additional time to the parties to present their positions and evidence in detail to him personally for a full and fair analysis and to explore an informal resolution of their dispute in the interest of avoiding the need for complaint issuance and subsequent litigation.

2. All documents and communications between the NLRB Region 19 office and the NLRB National office addressing the Boeing complaint.

As you know, Case 19-CA-32431 is an open enforcement action in which the NLRB has alleged that Boeing violated Section 8(a)(3) of the Act. The case is currently set for a hearing before an administrative law judge on June 14, 2011. During that hearing, Boeing will have an opportunity to present evidence and challenge the legal theory of the NLRB. At that hearing, both Boeing and the Machinists will be afforded due process protections and a right to a fair trial. Ultimately, any issues raised by this complaint will be resolved by the Board and the courts after evaluating a comprehensive factual record and the arguments of all parties.

To our knowledge, your request is the first this Agency has ever received from a Committee of the House of Representatives with jurisdiction over the Agency seeking documents within litigation files of an open enforcement action. Our litigation files typically contain affidavit testimony obtained under a promise of confidentiality, as well as the privileged work product of our attorneys and "road maps" of our litigation plans and preparations. The Supreme Court has recognized the importance of protecting the NLRB's assurances of confidentiality. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 239-41(1978) (upholding NLRB's policy of withholding from FOIA disclosure of witness affidavits in open cases). In addition, premature disclosure of the Acting General Counsel's strategic plans could seriously compromise the litigation and result in an unfair advantage to one litigant over another.

The Agency takes seriously its judicially mandated obligation to protect the due process rights of its litigants. See, e.g., *ATX, Inc. v. U.S. Department of Transportation*, 41 F.3d 1522 (D.C. Cir. 1994) (in declining to set aside an administrative decision of the Department of Transportation, the court emphasized that the agency took appropriate steps to insulate itself from Congressional intervention).

3. All documents and communications that support the NLRB's position that work is being "transferred" in this case; and
4. Past precedent that supports a finding that Boeing violated Section 8(a)(3) and 8(a)(1) of the NLRA when it decided to locate, not transfer, a second assembly line.

Consistent with our response to your second request, we are not in a position to address the issues to be litigated in the public hearing on the complaint scheduled to begin on June 14 outside the context of that hearing. The information requested here goes to the crux of those issues. The basic facts and legal theory of the Acting General Counsel's cases are contained in the complaint, the related press releases and fact sheet which are attached to this letter and available on the NLRB's public website at <http://www.nlr.gov/node/443>.

In addition, we would be happy to provide the Committee with copies of the transcript and exhibits from the hearing contemporaneous with their availability, as well as copies of the post-hearing briefs to be filed by all parties. The transcript will provide a detailed accounting of the exact nature of the case and the facts proffered in support and rebuttal, which frame the bases for all legal arguments. The briefs will clearly detail the precise precedent invoked and relied upon.

We trust that the information provided above sufficiently addresses your concerns about the investigatory process and timing of the issuance of the complaint against Boeing. If you have further questions, we would be pleased to meet with you to discuss how we might accommodate further information needs that you may have, consistent with our need to protect the integrity of our legal processes. Please do not hesitate to contact Jose Garza,

The Honorable John Kline  
The Honorable Phil Roe  
Page 5 of 5

Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-0013, if you wish to discuss this matter further.

Sincerely,



Celeste J. Mattina  
Acting Deputy General Counsel

#### Attachments

cc: The Honorable George Miller  
Ranking Minority Members  
Committee on Education and the Workforce  
House of Representatives  
2181 Rayburn House Office Building  
Washington, DC 20515-6100

The Honorable Robert E. Andrews  
Democratic Subcommittee Leader  
Subcommittee on Health, Employment,  
Labor and Pensions  
Committee on Education and the Workforce  
House of Representatives  
2181 Rayburn House Office Building  
Washington, DC 20515-6100

[Home](#) » [News & Media](#) » [News Releases](#)

## National Labor Relations Board issues complaint against Boeing Company for unlawfully transferring work to a non-union facility

April 20, 2011

**Contact:**

Office of Public Affairs  
202-273-1991  
[publicinfo@nlrb.gov](mailto:publicinfo@nlrb.gov)  
[www.nlrb.gov](http://www.nlrb.gov)

NLRB Acting General Counsel Lafe Solomon today issued a complaint against the Boeing Company alleging that it violated federal labor law by deciding to transfer a second production line to a non-union facility in South Carolina for discriminatory reasons.

Boeing announced in 2007 that it planned to assemble seven 787 Dreamliner airplanes per month in the Puget Sound area of Washington state, where its employees have long been represented by the International Association of Machinists and Aerospace Workers. The company later said that it would create a second production line to assemble an additional three planes a month to address a growing backlog of orders. In October 2009, Boeing announced that it would locate that second line at the non-union facility.

In repeated statements to employees and the media, company executives cited the unionized employees' past strike activity and the possibility of strikes occurring sometime in the future as the overriding factors in deciding to locate the second line in the non-union facility.

The NLRB launched an investigation of the transfer of second line work in response to charges filed by the Machinists union and found reasonable cause to believe that Boeing had violated two sections of the National Labor Relations Act because its statements were coercive to employees and its actions were motivated by a desire to retaliate for past strikes and chill future strike activity.

"A worker's right to strike is a fundamental right guaranteed by the National Labor Relations Act," Mr. Solomon said. "We also recognize the rights of employers to make business decisions based on their economic interests, but they must do so within the law. I have worked with the parties to encourage settlement in the hope of avoiding costly litigation, and my door remains open to that possibility."

To remedy the alleged unfair labor practices, the Acting General Counsel seeks an order that would require Boeing to maintain the second production line in Washington state. The complaint does not seek closure of the South Carolina facility, nor does it prohibit Boeing from assembling planes there.

Absent a settlement between the parties, the next step in the process will be a hearing before an NLRB administrative law judge in Seattle, set for June 14, at which both parties will have an opportunity to present evidence and arguments.

[Click here to view a fact sheet.](#)

[Printer-friendly version](#)

### Resources

[The NLRB Process](#)  
[MyNLRB](#)  
[Find a Case](#)  
[File Case Documents](#)  
[Graphs & Data](#)  
[Find Your Regional Office](#)  
[FAQs](#)  
[Forms](#)  
[National Labor Relations Act \(NLRA\)](#)  
[Related Agencies](#)

[Get E-mail Updates](#)

Sign up for updates or to access  
your subscriber preferences

[SHARE](#)    

[Home](#) » [Boeing Complaint Fact Sheet](#)

# Boeing Complaint Fact Sheet

On April 20, 2011, the Acting General Counsel of the National Labor Relations Board issued a complaint against the Boeing Company alleging that it violated federal labor law by deciding to transfer a second airplane production line from a union facility in the state of Washington to a non-union facility in South Carolina for discriminatory reasons. A hearing has been set for June 14, 2011 in Seattle before an administrative law judge.

*Click [here](#) to see a news release about the complaint, and [here](#) to see a copy of the full complaint.*

*Click [here](#) to view Boeing's response to the complaint.*

## The Charge and Complaint

On March 26, 2010, the International Association of Machinists and Aerospace Workers, District Lodge 751, filed a charge with the NLRB alleging that the Boeing Company had engaged in multiple unfair labor practices related to its decision to place a second production line for the 787 Dreamliner airplane in a non-union facility.

Specifically, the union charged that the decision to transfer the line was made to retaliate against union employees for participating in past strikes and to chill future strike activity, which is protected under the National Labor Relations Act.

The union also charged that the company violated the National Labor Relations Act by failing to negotiate over the decision to transfer the production line. The Machinists' union has represented Boeing Company employees in the Puget Sound area of Washington, where the planes are assembled, since 1936, and in Portland, Oregon, where some airplane parts are made, since 1975.

Throughout the investigation of the charge, NLRB officials met with both parties in efforts to facilitate a settlement agreement. The overwhelming majority of NLRB charges found to have merit are settled by agreement. Although no settlement was reached and the Agency was compelled to pursue litigation, the Acting General Counsel remains open to a resolution between the parties.

The complaint issued by the Acting General Counsel ([19-CA-32431](#)) alleges that Boeing violated two sections of the National Labor Relations Act by making coercive statements and threats to employees for engaging in statutorily protected activities, and by deciding to place the second line at a non-union facility, and establish a parts supply program nearby, in retaliation for past strike activity and to chill future strike activity by its union employees.

The investigation found that Boeing officials communicated the unlawful motivation in multiple statements to employees and the media. For example, a senior Boeing official said in a videotaped interview with the Seattle Times newspaper: "The overriding factor (in transferring the line) was not the business climate. And it was not the wages we're paying today. It was that we cannot afford to have a work stoppage, you know, every three years."

The complaint also alleges that Boeing's actions were "inherently destructive of the rights guaranteed employees by [Section 7 of the Act](#)."

The investigation did not find merit to the union's charge that Boeing failed to bargain in good faith over its decision regarding the second line. Although a decision to locate unit work would typically be a mandatory subject of bargaining, in this case, the union had waived its right to bargain on the issue in its collective bargaining agreement with Boeing.

## The Law and Supporting Cases

The NLRB enforces the National Labor Relations Act, which guarantees employees the right to organize and collectively bargain, or to refrain from doing so. Applicable Sections of the Act follow:

### RIGHTS OF EMPLOYEES

**Section 7:** Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities...

## In this Section

- [Home](#)
- [Rights We Protect](#)
- [What We Do](#)
- [Cases & Decisions](#)
- [Who We Are](#)
- [News & Media](#)
- [Publications](#)

## Resources

- [The NLRB Process](#)
- [MyNLRB](#)
- [Find a Case](#)
- [File Case Documents](#)
- [Graphs & Data](#)
- [Find Your Regional Office](#)
- [FAQs](#)
- [Forms](#)
- [National Labor Relations Act \(NLRA\)](#)
- [Related Agencies](#)

## Get E-mail Updates

Sign up for updates or to access your subscriber preferences



**RIGHT TO STRIKE**

Section 13: Nothing in this Act ... shall be construed so as either to interfere with or impede or diminish in any way the right to strike or to affect the limitations or qualifications on that right.

**UNFAIR LABOR PRACTICES (relevant sections)**

Section 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;  
(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization

**Cases:**

On the 8(a)(1) charge:

The U.S. Supreme Court delineated the line between protected employer speech versus unlawful employer speech under the NLRA in NLRB v. Gissel Packing Corp., 395 US 575, 618 (1969).

In General Electric Company, 215 NLRB 520 (1974), the National Labor Relations Board applied the Gissel test to set aside an election because the employer, citing concerns about possible future strikes, stated that the plant's nonunion status was a primary factor in choosing to locate a production line for a new motor there. In its decision, the Board distinguished an employer's right to take defensive action when threatened with an imminent strike from threats to transfer work "merely because of the possibility of a strike at some speculative future date."

Since then, the Board has repeatedly held that an employer violates section 8(a)(1) by threatening that employees will lose their jobs if they join a strike, or by predicting a loss of business and jobs because of unionization or strike disruptions without any factual basis. In contrast, the Board has found that employers may lawfully relate concerns raised by customers (Curwood, Inc., 339 NLRB 1137 (2003)). They may also reference the *possibility* that unionization, including strikes, might harm relationships with consumers, as opposed to predicting "unavoidable consequences." Miller Industries Towing Equipment, Inc., 342 NLRB 1074, 1075-76 (2004)

On the 8(a)(3) charge:

An employer's discouragement of its employees' participation in a legitimate strike constitutes discouragement of union membership within the meaning of this section. This applies to employer conduct designed to retaliate against employees for having engaged in a strike in the past (Capehorn Industry, 336 NLRB 364 (2001) where the employer failed to reinstate strikers when there was no legitimate business justification for permanently subcontracting the work), as well as employer conduct designed to forestall employees from exercising their right to strike in the future (Century Air Freight, 284 NLRB 730 (1987) where employer permanently subcontracted unit work and discharged employees in order to forestall the exercise of their right to strike; and Westpac Electric, 321 NLRB 1322 (1996), where employer isolated employee in retaliation for previous and anticipated future strike activities). In National Fabricators 295 NLRB 1095 (1989), where potential strikers were targeted for layoffs, the Board held that "disfavoring employees who were likely to strike, is the kind of coercive discrimination that...discourages...protected activity."

**Next Steps**

It is important to note that the complaint states allegations by the Acting General Counsel that the employer has committed unfair labor practices. The Board has made no findings on these allegations. The next step in the process will be a hearing before an NLRB administrative law judge, scheduled for June 14 at the NLRB's Seattle office. At the hearing, both parties will have an opportunity to present evidence and argue in favor of their position. The decision of the judge may be appealed to the Board in Washington by the filing of exceptions by either party. The Board's decision could further be appealed to a federal court of appeals and then to the U. S. Supreme Court. [Click here for a flow chart of the NLRB process.](#)

This fact sheet was posted on 4/20/2011 and will be updated periodically.

[Printer-friendly version](#)



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

**COMPLAINT AND NOTICE OF HEARING**

International Association of Machinists and Aerospace Workers District Lodge No. 751 ("Local 751" or the "Union"), affiliated with International Association of Machinists and Aerospace Workers ("IAM"), has charged in Case 19-CA-32431 that The Boeing Company ("Respondent" or "Boeing"), has been engaging in unfair labor practices as set forth in the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.*

Based thereon, the Acting General Counsel of the National Labor Relations Board (the "Board"), by the undersigned, pursuant to § 10(b) of the Act and § 102.15 of the Board's Rules and Regulations, issues this Complaint and Notice of Hearing and alleges as follows:

1.

The Charge was filed by the Union on March 26, 2010, and was served on Respondent by regular mail on or about March 29, 2010.

2.

(a) Respondent, a State of Delaware corporation with its headquarters in Chicago, Illinois, manufactures and produces military and commercial aircraft at various facilities throughout the United States, including in Everett, Washington (the "facility"), and others in the Seattle, Washington, and Portland, Oregon, metropolitan areas.

(b) Respondent, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of \$500,000.

(c) Respondent, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(a), both sold and shipped from, and purchased and received at, the facility goods valued in excess of \$50,000 directly to and from points outside the State of Washington.

(d) Respondent has been at all material times an employer engaged in commerce within the meaning of §§ 2(2), (6) and (7) of the Act.

3.

The Union is, and has been at all material times, a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors within the meaning of

§ 2(11) of the Act, and/or agents within the meaning of § 2(13) of the Act, acting on behalf of Respondent:

Jim Albaugh	—	Executive Vice President, Boeing; President and CEO of Integrated Defense Systems (until late August 2009); CEO, Boeing Commercial Airplanes (as of late August 2009)
Scott Carson	—	Executive Vice President, Boeing; CEO, Boeing Commercial Airplanes (until late August 2009)
Ray Conner	—	Vice President and General Manager of Supply Chain Management and Operations, Boeing Commercial Airplanes
Scott Fancher	—	Vice President and General Manager of the 787 Program
Fred Kiga	—	Vice President, Government and Community Relations
Doug Kight	—	Vice President, Human Resources, Boeing Commercial Airplanes
Jim McNerney	—	President, Chairman, and CEO
Jim Proulx	—	Boeing spokesman
Pat Shanahan	—	Vice President and General Manager of Airplane Programs
Gene Woloshyn	—	Vice President, Employee Relations

5.

(a) Those employees of Respondent enumerated in Section 1.1(a) of the collective bargaining agreement described below in paragraph 5(c), including, *inter alia*, all production and maintenance employees in Washington State, constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act (the "Puget Sound Unit").

(b) Those employees of Respondent enumerated in Section 1.1(c) of the collective bargaining agreement described below in paragraph 5(c), including, *inter*

*alia*, all production and maintenance employees in the Portland, Oregon area, constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act (the "Portland Unit").

(c) Since at least 1975 and at all material times, the IAM has been the designated exclusive collective bargaining representative of the Puget Sound Unit and the Portland Unit (collectively, the "Unit") and recognized as such representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 2, 2008, to September 8, 2012.

(d) Since 1975, during the course of the parties' collective-bargaining relationship, the IAM engaged in strikes in 1977, 1989, 1995, 2005, and 2008.

## 6.

On or about the dates and by the manner noted below, Respondent made coercive statements to its employees that it would remove or had removed work from the Unit because employees had struck and Respondent threatened or impliedly threatened that the Unit would lose additional work in the event of future strikes:

(a) October 21, 2009, by McNerney in a quarterly earnings conference call that was posted on Boeing's intranet website for all employees and reported in the Seattle Post Intelligencer Aerospace News and quoted in the Seattle Times, made an extended statement regarding "diversifying [Respondent's] labor pool and labor relationship," and moving the 787 Dreamliner work to South Carolina due to "strikes happening every three to four years in Puget Sound."

(b) October 28, 2009, based on its October 28, 2009, memorandum entitled "787 Second Line, Questions and Answers for Managers," informed employees, among other things, that its decision to locate the second 787 Dreamliner line in South Carolina was made in order to reduce Respondent's vulnerability to delivery disruptions caused by work stoppages.

(c) December 7, 2009, by Conner and Proulx in an article appearing in the Seattle Times, attributed Respondent's 787 Dreamliner production decision to use a "dual-sourcing" system and to contract with separate suppliers for the South Carolina line to past Unit strikes.

(d) December 8, 2009, by Conner in an article appearing in the Puget Sound Business Journal, attributed Respondent's 787 Dreamliner production decision to use a "dual-sourcing" system and to contract with separate suppliers for the South Carolina line to past Unit strikes.

(e) March 2, 2010, by Albaugh in a video-taped interview with a Seattle Times reporter, stated that Respondent decided to locate its 787 Dreamliner second line in South Carolina because of past Unit strikes, and threatened the loss of future Unit work opportunities because of such strikes.

7.

(a) In or about October 2009, on a date better known to Respondent, but no later than October 28, 2009, Respondent decided to transfer its second 787 Dreamliner production line of 3 planes per month from the Unit to its non-union site in North Charleston, South Carolina.

(b) Respondent engaged in the conduct described above in paragraph 7(a) because the Unit employees assisted and/or supported the Union by, *inter alia*, engaging in the protected, concerted activity of lawful strikes and to discourage these and/or other employees from engaging in these or other union and/or protected, concerted activities.

(c) Respondent's conduct described above in paragraph 7(a), combined with the conduct described above in paragraph 6, is also inherently destructive of the rights guaranteed employees by § 7 of the Act.

8.

(a) In or about October 2009, on a date better known to Respondent, but no later than December 3, 2009, Respondent decided to transfer a sourcing supply program for its 787 Dreamliner production line from the Unit to its non-union facility in North Charleston, South Carolina, or to subcontractors.

(b) Respondent engaged in the conduct described above in paragraph 8(a) because the Unit employees assisted and/or supported the Union by, *inter alia*, engaging in the protected, concerted activity of lawful strikes and to discourage these and/or other employees from engaging in these or other union and/or protected, concerted activities.

(c) Respondent's conduct described above in paragraph 8(a), combined with the conduct described above in paragraphs 6 and 7(a), is also inherently destructive of the rights guaranteed employees by § 7 of the Act.

9.

By the conduct described above in paragraph 6, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(a)(1) of the Act.

10.

By the conduct described above in paragraphs 7 and 8, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of §§ 8(a)(3) and (1) of the Act.

11.

By the conduct described above in paragraphs 6 through 10, Respondent has engaged in unfair labor practices affecting commerce within the meaning of §§ 2(6) and (7) of the Act.

12.

As part of the remedy for the unfair labor practices alleged herein, the Acting General Counsel seeks an Order requiring either that one of the high level officials of Respondent alleged to have committed the violations enumerated above in paragraph 6 read, or that a designated Board agent read in the presence of a high level Boeing official, any notice that issues in this matter, and requiring Respondent to broadcast such reading on Respondent's intranet to all employees.

13.

(a) As part of the remedy for the unfair labor practices alleged above in paragraphs 7 and 8, the Acting General Counsel seeks an Order requiring Respondent

to have the Unit operate its second line of 787 Dreamliner aircraft assembly production in the State of Washington, utilizing supply lines maintained by the Unit in the Seattle, Washington, and Portland, Oregon, area facilities.

(b) Other than as set forth in paragraph 13(a) above, the relief requested by 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.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to this Complaint. The answer must be **received by this office on or before May 4, 2011, or postmarked on or before May 3, 2011.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at **www.nlr.gov**, click on ***File Case Documents***, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due



date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.


Service of the answer on each of the other parties must be accomplished in conformance with the requirements of § 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in this Complaint are true.

#### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT on the 14<sup>th</sup> day of June, 2011, at 9:00 a.m., in James C. Sand Hearing Room, 2966 Jackson Federal Building, 915 Second Avenue, Seattle, Washington, and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in**

this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

**DATED** at Seattle, Washington, this 20<sup>th</sup> day of April, 2011.



---

Richard L. Ahearn, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174-1078