



United States Government

NATIONAL LABOR RELATIONS BOARD

1099 14th STREET NW
WASHINGTON DC 20570

June 3, 2011

The Honorable Darrell Issa
Chairman, Committee on Oversight
and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

I write in response to your recent invitation to testify before the full Committee on Friday, June 17, 2011, in North Charleston, South Carolina, concerning my recent decision to issue a complaint alleging the Boeing Company engaged in certain discriminatory behavior. Because my appearance at this hearing could threaten the rights of the parties to a fair trial, I must respectfully decline your invitation.

Your inquiry concerns an open case that is scheduled to be tried before an administrative law judge in Seattle, Washington beginning June 14, 2011. That trial will almost certainly be in progress when your Committee gathers in South Carolina only three days later. As Acting General Counsel of the National Labor Relations Board, I am ultimately responsible for overseeing the litigation in Seattle and for making all strategic decisions related to the prosecution of this case.

Courts have noted the danger to the due process rights of litigants to an administrative proceeding posed by Congressional hearings and other interventions that "focus[] directly and substantially upon the mental decisional process" of the decision-makers in an ongoing case. *Pillsbury Company v. Federal Trade Commission*, 354 F.2d 952, 964 (5th Cir. 1966); see also *Peter Kiewit Sons' Co. v. U.S. Army Corps of Engineers*, 714 F.2d 163, 170 (D.C. Cir. 1983); see also *SEC v. Wheeling-Pittsburg Steel Corp.*, 648 F.2d 118 (3d Cir. 1981) (court found that Congressional hearing focusing on target of an administrative enforcement proceeding was part of overwhelming evidence that administrative proceeding was being "subverted" by Congressional intervention in violation of the due process rights of a litigant to that proceeding). Indeed, independent agencies conducting legal administrative proceedings have a constitutional and statutory obligation to resist Congressional influence in order to protect the due process rights of the litigants to the proceeding. See, e.g., *Gulf*

Oil Corporation v. FPC, 563 F.2d 588 (3d Cir. 1977) (court found that Congressional intervention into the administrative process did not influence the agency because the agency did not accede to Congressional requests).

During the Seattle hearing, Boeing will have ample opportunity to review and challenge the evidence and legal theories that formed the basis of this complaint and to present evidence and legal arguments in its defense. Boeing and the International Association of Machinists and Aerospace Workers must be afforded due process protections and a right to a fair trial at all stages of this proceeding. Premature disclosure of information and arguments could have a negative impact on the rights of the litigating parties, breach assurances of confidentiality, and generally unduly interfere with an enforcement action.

As noted previously, in addition to providing the Committee with all public documents relevant to this case, my office will make available copies of the transcript and exhibits from the hearing, as well as post-hearing briefs filed by the parties, as soon as they are available. I sincerely hope that these documents will satisfy the Committee's legitimate informational needs while protecting the constitutional and statutory rights of the litigants in this case. If you have further questions, Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs (202 273-3700), would be happy to meet with you to discuss how we might accommodate further informational needs that you may have, consistent with our need to protect the integrity of our legal process.

Sincerely,



Lafe E. Solomon
Acting General Counsel

cc: The Honorable Elijah Cummings
Ranking Minority Member
Committee on Oversight and
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U.S. House of Representatives
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