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December 16, 2011

Lafe E. Solomon
Acting General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dear Acting General Counsel Solomon:

We write to renew and expand our request for documents and communications relating to your complaint against the Boeing Company (Boeing). While the case has been closed, immediate congressional oversight is necessary to settle a number of unresolved issues regarding the theory and disposition of the case. Thousands of jobs in South Carolina and many more across the country were threatened by this draconian enforcement action against a private employer. The need for oversight is only enhanced by your stated willingness to bring a similar suit in the future and the uncertainty this creates.

In response to a charge filed by the International Association of Machinists and Aerospace Workers District Lodge No. 751 (Machinists), on April 20, 2011, National Labor Relations Board (NLRB) Regional Director Richard Ahearn issued a complaint against Boeing. The complaint, which you authorized, alleges that statements made by Boeing executives beginning in 2009 and their decision to establish a second 787 Dreamliner in South Carolina constituted a unlawful violation of sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act (NLRA).¹

Since the complaint was filed, the public has learned that no union employee at the Puget Sound facility lost his or her job or was financially harmed by Boeing's decision to locate the new assembly line in South Carolina. Despite these facts, your office pursued an extraordinary remedy that sought to force a private employer to relocate work underway in South Carolina to Washington.² In taking this action, you made clear your view that Boeing had, in fact, violated the NLRA, stating, "[t]he complaint involves *matters of fact and law* that are not unique to this case, and it was issued only after a thorough investigation in the field, a further careful review by our attorneys in Washington, and an invitation by me to the parties to present their case and discuss

¹ *Complaint and Notice of Hearing: The Boeing Company and International Association of Machinists and Aerospace Workers District Lodge 751*, Case 19-CA-32431, Page 6.

² *Id.* at 7-8.

the possibility of a settlement. ***Only then did I authorize the complaint alleging that certain statements and decisions by Boeing officials were discriminatory under our statute*** [emphasis added].”³

On December 9, 2011, in the midst of a hearing intended to litigate these facts, at the Machinists request, you withdrew the charge against Boeing. The withdrawal was secured after the ratification of a four-year collective bargaining agreement between Boeing and the Machinists. While we are pleased Boeing and the union agreed to a new contract, this agreement is wholly unrelated to the complaint involving “matters of fact and law” your office pursued for almost eight months.

In your December 9 statement announcing the decision to withdraw the complaint, you noted that “[t]his is the outcome [you] have always preferred.”⁴ You went on to say that you were “please[d] that the collective bargaining process has succeeded.”⁵ Additionally, later that day, you stated “[i]f [you] were ever faced with a similar pattern, [you] might well issue a complaint.”⁶

Even though you have withdrawn the complaint at the request of the Machinists, it appears you continue to believe Boeing’s decision to locate this new work in South Carolina was a violation of the NLRA. Yet it still remains unclear what individuals in Washington were harmed, how the new labor agreement makes these individuals whole, and the NLRB’s role in those negotiations.

Due to these statements and the timing of your decision to withdraw the complaint, we are left to conclude your actions were intended to apply government pressure on a private employer in the middle of a labor dispute, which is wholly inconsistent with fostering collective bargaining and productive labor-management relations. A top priority of your office is to protect the rights of workers, not pick winners and losers in a labor dispute. The instability born from this bureaucratic overreach and threats of future overreach will undermine job creation across the country at a time we can least afford it.

Given the importance of this case and the fact that is now closed, we are renewing and expanding our request for documents and communications related to the April 20, 2011, complaint against the Boeing Company. Provide the following no later than January 3, 2011:

1. All documents and communications between the NLRB and outside parties relating to case 19-CA-32431;
2. All documents and communications between Acting General Counsel Lafe Solomon and NLRB Board Members relating to case 19-CA-32431;
3. All documents and communications relating to the settlement of case 19-CA-32431;

³ National Labor Relations Board, <https://www.nlr.gov/news/acting-general-counsel-lafe-solomon-releases-statement-boeing-complaint> (last visited on December 14, 2011).

⁴ National Labor Relations Board, <http://www.nlr.gov/news/nlr-acting-general-counsel-announces-close-boeing-case> (last visited on December 12, 2011).

⁵ *Id.*

⁶ *Labor board: Boeing case dropped, but more possible*, The Washington Times (December 9, 2011), <http://www.washingtontimes.com/news/2011/dec/9/labor-board-boeing-case-dropped-more-possible/>.

4. All documents and communications prepared by the Division of Advice relating to case 19-CA-32431;
5. All documents and communications between the NLRB Region 19 office and the NLRB National office addressing case 19-CA-32431 and the preceding charge by the Machinists; and
6. All documents and communications that support the NLRB's position that work was or is being "transferred" in case 19-CA-32431.

Thank you for your cooperation in this matter. If you have any questions regarding this request, please contact Marvin Kaplan of the committee staff at (202) 225-7101.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



PHIL ROE, M.D.
Chairman
Subcommittee on Health, Employment, Labor
and Pensions

cc: The Honorable George Miller, Senior Democratic Member, Committee on Education and the Workforce

cc: The Honorable Robert Andrews, Senior Democratic Member, Subcommittee on Health, Employment, Labor, and Pensions