

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

THE BOEING COMPANY

and

INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE  
WORKERS DISTRICT LODGE 751, affiliated  
with  
INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE  
WORKERS

Case 19-CA-32431

**ANSWER**

Respondent The Boeing Company (“Boeing”), by their undersigned attorneys, for their Answer to the Complaint and Notice of Hearing (“Complaint”) filed by the Acting General Counsel of the National Labor Relations Board (“NLRB”), states as follows:

**GENERAL DENIAL**

Except as otherwise expressly stated herein, Boeing denies each and every allegation contained in the Complaint, including, without limitation, any allegations contained in the preamble, headings, or subheadings of the Complaint, and Boeing specifically denies that it violated the National Labor Relations Act (“NLRA”) in any of the manners alleged in the Complaint or in any other manner. Pursuant to Section 102.20 of the Board’s rules, averments in the Complaint to which no responsive pleading is required shall be deemed as denied. Boeing expressly reserves the right to seek to amend and/or supplement its Answer as may be necessary.

## **DEFENSES**

Without assuming any burden of proof, persuasion or production not otherwise legally assigned to it as to any element of the claims alleged in the Complaint, Boeing asserts the following defenses.

1. The Complaint and each purported claim for relief stated therein fail to allege facts sufficient to state a claim upon which relief may be granted.
2. The statements cited in Paragraphs 6(a)-6(e) of the Complaint are protected statements under Section 8(c) of the NLRA and under the First Amendment to the United States Constitution and are not admissible to show any violation of the NLRA.
3. Boeing'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 Boeing; 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. In any event, even ascribing an intent to Boeing that it placed the second line in North Charleston so as to mitigate the harmful economic effects of an anticipated future strike would not be evidence that the decision to place the second assembly line in North Charleston was designed to retaliate against the IAM for past strikes. Nevertheless, Boeing 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.
4. Even if the actions described in the Complaint had constituted movement or transfer of work, which allegations Boeing expressly denies, the International Association of Machinists and Aerospace Workers District Lodge 751, affiliated with International Association

5. Boeing has not violated Section 8(a)(3) of the NLRA as it has not discriminated in the hire, wages, tenure, or terms or conditions of employment of any Unit member.

6. Boeing's alleged conduct was not inherently destructive of employees' rights under the NLRA because, *inter alia*, in its collective bargaining agreement with Boeing, the IAM expressly agreed that Boeing has the right to place work in any location of its choice without the need to bargain with the IAM, and because an intent to mitigate the adverse economic impact of an anticipated future strike is not inherently destructive of protected employee rights under the NLRA.

7. Boeing has not violated Section 8(a)(1) of the NLRA as it has not interfered with, restrained, or coerced employees represented by the IAM in the exercise of their rights protected by the NLRA.

8. The remedy requested in the Complaint is impermissibly punitive and would cause an undue hardship on Boeing, its employees, and the State of South Carolina. Moreover, none of the complained of actions caused any hardship on any Boeing employees or the State of Washington.

9. The remedy requested in Paragraph 13(a) of the Complaint is impermissibly retroactive because its legal basis represents a radical and not reasonably anticipated departure from current Board and court precedent.

10. The remedy requested in Paragraph 12 of the Complaint is improper because Boeing has not violated Section 8(a)(1) of the NLRA.

11. The remedy requested in Paragraph 13(a) of the Complaint is impermissible because it does not seek a restoration of the status quo.

12. Contrary to what the Complaint alleges in Paragraph 13(b), the remedy sought in Paragraph 13(b) would effectively cause Boeing to close its assembly facility in North Charleston, South Carolina.

13. Some or all of the claims asserted in the Complaint are barred by the six month statute of limitations set forth in Section 10(b) of the NLRA.

14. The Complaint is *ultra vires* because the Acting General Counsel of the NLRB did not lawfully hold the office of Acting General Counsel at the time he directed that the Complaint be filed.

#### **RESPONSE TO SPECIFIC ALLEGATIONS OF THE COMPLAINT**

AND NOW, incorporating the foregoing, Boeing states as follows in response to the specific allegations of the Complaint:

Preamble: Boeing denies the allegations contained in the preamble, except to admit that District Lodge 751, affiliated with the International Association of Machinists and Aerospace Workers (“IAM”) has charged in case 19-CA-32431 that Boeing has engaged in certain unfair labor practices prohibited by the NLRA, and that the Acting General Counsel of the NLRB has issued this Complaint and Notice of Hearing based upon the IAM’s charge.

1. Boeing lacks information and knowledge sufficient to form a belief as to the allegations of Paragraph 1, except to admit that, on or around March 29, 2010, it received by regular mail a charge, designated as Case No. 19-CA-32431.

2. (a) Boeing admits the allegations of Paragraph 2(a).

(b) Boeing denies the allegations of Paragraph 2(b), except to admit that in the last twelve months its business operations resulted in gross revenues in excess of \$500,000.

(c) Boeing denies the allegations of Paragraph 2(c), except to admit that during the last twelve months it received, shipped, sold and/or purchase goods at its facilities in the State of Washington valued in excess of \$50,000 from places outside of the State of Washington.

(d) Boeing denies the allegations of Paragraph 2(d), except to admit that it is and has been an employer engaged in commerce.

3. Boeing admits the allegations of Paragraph 3.

4. The first sentence of Paragraph 4 states legal conclusions for which no answer is required. As to the remaining allegations in Paragraph 4, Boeing admits that the identified individuals are or were either agents or supervisors, and that they held the following positions in October 2009:

- James (“Jim”) F. Albaugh: Executive Vice President, The Boeing Company; Chief Executive Officer, Boeing Commercial Airplanes
- Scott Carson: Executive Vice President, The Boeing Company; Chief Executive Officer, Boeing Commercial Airplanes (until August 2009)
- Raymond L. Conner: Vice President and General Manager of Supply Chain Management and Operations, Boeing Commercial Airplanes
- Scott Fancher: Vice President and General Manager, Boeing 787 Dreamliner Program, Boeing Commercial Airplanes
- Frederick C. Kiga: Vice President, State and Local Government Relations and Global Corporate Citizenship for the Northwest Region, Boeing Commercial Airplanes

- Douglas P. Kight: Vice President, Human Resources, Boeing Commercial Airplanes
- W. James (“Jim”) McNerney, Jr.: Chairman of the Board, President, and Chief Executive Officer, The Boeing Company
- James Proulx: Manager, Boeing Commercial Airplanes News and Media
- Patrick (“Pat”) Shanahan: Vice President and General Manager, Airplane Programs, Boeing Commercial Airplanes
- Eugene Woloshyn: Vice President, Labor Relations, The Boeing Company

5. (a) The allegations contained in Paragraph 5(a) state legal conclusions for which no response is required, but to the extent a response is required, Boeing admits that the production and maintenance employees in Washington State constituted a “Unit” for collective bargaining purposes.

(b) The allegations contained in Paragraph 5(b) state legal conclusions for which no response is required, but to the extent a response is required, Boeing admits that the production and maintenance employees in the Portland, Oregon area constitute a “Unit” for collective bargaining purposes.

(c) Boeing admits the allegations of Paragraph 5(c).

(d) Boeing admits the allegations of Paragraph 5(d).

6. Boeing denies the introductory sentence to Paragraph 6, and specifically denies that, it “removed” or “had removed work” from its facilities in Everett, Washington or Portland, Oregon because Unit employees had struck Boeing, and also specifically denies that it threatened or impliedly threatened that those facilities would lose additional work in the event of future Unit strikes. As to the lettered subparagraphs:

(a) Boeing denies the allegations of Paragraph 6(a), except to admit that its President, Chairman and CEO James McNerney, participated in an earnings conference call on October 21, 2009; and Boeing specifically denies that Mr. McNerney made an “extended statement” or any statement about moving 787 Dreamliner work to South Carolina due to “strikes happening every three or four years in Puget Sound.” Boeing admits that the referenced newspaper articles appeared in *The Seattle Post-Intelligencer* and *The Seattle Times*.

(b) Boeing denies the allegations of Paragraph 6(b), and further states that the referenced October 28, 2009 memorandum speaks for itself.

(c) Boeing denies the allegations of Paragraph 6(c), except to admit that the referenced newspaper article appeared in *The Seattle Times* on December 7, 2009.

(d) Boeing denies the allegations of Paragraph 6(d), except to admit that the referenced newspaper article appeared in *The Puget Sound Business Journal* on December 8, 2009.

(e) Boeing denies the allegations of Paragraph 6(e), except to admit that a Seattle Times reporter conducted a video-taped interview of Mr. Albaugh and that the tape speaks for itself.

7. (a) Boeing denies the allegations of Paragraph 7(a), and specifically denies that it transferred the “second 787 Dreamliner” assembly line from its facility in Everett, Washington to a facility to be constructed in North Charleston, South Carolina, and except to state that on October 28, 2009, Boeing announced that it would place a new second assembly line for the 787 Dreamliner in North Charleston, South Carolina.

(b) Boeing denies the allegations of Paragraph 7(b).

(c) Boeing denies the allegations of Paragraph 7(c).

8. (a) Boeing denies the allegations of Paragraph 8(a), and specifically denies that it transferred a sourcing supply program for the 787 Dreamliner assembly line from its facilities in Portland, Oregon to North Charleston, South Carolina.

(b) Boeing denies the allegations of Paragraph 8(b).

(c) Boeing denies the allegations of Paragraph 8(c).

9. Boeing denies the allegations contained in Paragraph 9.

10. Boeing denies the allegations contained Paragraph 10.

11. Boeing denies the allegations contained in Paragraph 11.

12. Paragraph 12 does not allege facts for which an answer is required, but relates the remedy sought by the Acting General Counsel and, accordingly, no response is required.

However, to the extent that a response may be deemed to be necessary, Boeing denies that the Acting General Counsel is entitled to, or that the Board can order the remedy requested in Paragraph 12.

13. (a) Paragraph 13(a) does not allege facts for which an answer is required, but relates the remedy sought by the Acting General Counsel and, accordingly, no response is required. However, to the extent that a response may be deemed to be necessary, Boeing denies that the Acting General Counsel is entitled to the remedy, or that the Board can order the remedy requested in Paragraph 13(a).


(b) Paragraph 13(b) does not allege facts for which an answer is required but merely describes what the Acting General Counsel says is not part of the remedy he is seeking. To the extent that a response may be deemed to be necessary, Boeing denies that the Acting General Counsel has correctly stated that the remedy sought in Paragraph 13(a) will not effectively cause Boeing's assembly facility in North Charleston to shut down.



Boeing reserves the right to raise any additional defenses not asserted herein of which they may become aware through investigation, as may be appropriate at a later time.

Respectfully Submitted,

Dated: May 4, 2011

  
\_\_\_\_\_  
William J. Kilberg P.C.  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue N.W.  
Washington, District of Columbia 20036  
Telephone: 202.955.8500  
Facsimile: 202.467.0539

Richard B. Hankins  
MCKENNA LONG & ALDRIDGE  
303 Peachtree Street, N.E.  
Atlanta, Georgia 30308  
Telephone: 404.527-4000  
Facsimile: 404.527-4198

Attorneys for The Boeing Company

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

**CERTIFICATE OF SERVICE**

I certify that a copy of Respondent's Answer was electronically served on May 4, 2011

and sent by overnight mail to the following parties:

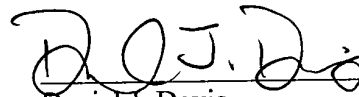
Richard L. Ahearn  
Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174-1078  
Richard.Ahearn@nrlrb.gov

Mara-Louise Anzalone  
Counsel for the Acting General Counsel  
National Labor Relations Board  
915 2<sup>nd</sup> Avenue, Suite 2948  
Seattle, Washington 98174-1078  
Mara-Louise.Anzalone@nrlrb.gov

David Campbell  
Carson Glickman-Flora  
SCHWERIN CAMPBELL BARNARD IGLITZIN & LAVITT LLP  
18 West Mercer Street, Suite 400  
Seattle, Washington 98119  
Campbell@workerlaw.com  
Flora@workerlaw.com

Counsel for IAM

DATED this 4<sup>th</sup> day of May, 2011

A handwritten signature in black ink, appearing to read "D.J. Davis", written over a horizontal line.

Daniel J. Davis  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, NW  
Washington, D.C. 20036-5303  
DDavis@Gibsondunn.com