Microsoft Outlook

From: Kearney, Barry J.
Sent: Wednesday, May 04, 2011 9:35 AM
To: Farrell, Ellen; Sophir, Jayme; Szapiro, Miriam; Willen, Debra L
Subject: FW:
Attachments: Solomon letter with attachment - May 3, 2011.pdf; ATT00001..htm

Exemption 5

From: Solomon, Lafe E.
Sent: Tuesday, May 03, 2011 11:59 AM
To: Cleeland, Nancy; Kearney, Barry J.; Farrell, Ellen; Sophir, Jayme; Mattina, Celeste J.; Abruzzo, Jennifer; Ahearn, Richard L.; Garza, Jose
Subject: Fwd:

Sent from my mobile

Begin forwarded message:

> **From:** "Luttig, Michael" <michael.luttig@boeing.com>
> **To:** "Solomon, Lafe E." <Lafe.Solomon@nlrb.gov>

NLRB-FOIA-U00000495

J. Michael Luttig
Executive Vice President &
General Counsel

The Boeing Company
100 N Riverside MC 5003-6027
Chicago, IL 60606-1596

May 3, 2011

Lafe E. Solomon, Esquire
Acting General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570-0001

Dear Mr. Solomon:

I write regarding statements in your complaint and elsewhere—including statements attributed to you in the *New York Times* on April 23—about Boeing's decision to place its new 787 final assembly line in South Carolina. A number of these statements, which are critical to your case against Boeing, fundamentally misquote or mischaracterize statements by Boeing executives and actions taken by the Company. You have a responsibility to correct these misquotations and mischaracterizations, for the public record and also for purposes of the complaint you have filed. Through these misquotations and mischaracterizations, you have done a grave disservice to The Boeing Company, its executives and shareholders, and to the 160,000 Boeing employees worldwide. And, of course, you have filed a complaint based upon these misstatements that cannot be credibly maintained under law.

Your Statement That Boeing "Transferred" Union Work

As an initial matter, repeated statements in the complaint allege that Boeing "*removed* work" from Puget Sound (¶6), "decided to *transfer* its second 787 Dreamliner production line" to South Carolina (¶7(a)), and "decided to *transfer* a sourcing supply program" to South Carolina (¶8(a)). Your April 20 press release makes the same assertion: "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."

As you well know, no work—none at all—was "removed" or "transferred" from Puget Sound. The second line for the 787 is a new final assembly line. As it did not previously exist in Puget Sound or elsewhere, the second assembly line could not have been "removed" from, "transferred" or otherwise "moved" to South Carolina. Simply put, the work that is and will be done at our Charleston, South Carolina final assembly facility is new work, required and added in response to the historic customer demand for the 787. No member of the International Association of Machinists' union (IAM) in Puget Sound has lost his or her job, or otherwise suffered

any adverse employment action, as a result of the placement of this new work in the State of South Carolina.

Your own Regional Director, whose office you have tasked with prosecuting this case, understands that, and has accurately and publicly described the matter differently than you. As the Seattle Times reported last year, "Richard Ahearn, the NLRB regional director investigating the complaint, said 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." Dominic Gates, *Machinists File Unfair Labor Charge Against Boeing over Charleston*, Seattle Times, June 4, 2010.

Since no actual work was "transferred," it now appears that NLRB officials are already, via public statements, transforming the theory of the complaint to say that, because Boeing committed to the State of Washington that it would build all of the Company's 787s in that state, the building of airplanes in South Carolina constitutes "transferred" work or work "removed." Thus, on April 26, an NLRB spokeswoman, Nancy Cleeland, apparently told a news organization that "the charge that Boeing is transferring work away from union employees stems from the company's original commitment 'to the State of Washington that it would build the Dreamliner airplanes in this state.'"

The premise underlying that assertion—that Boeing committed to the State of Washington to build all of the Company's 787s in Washington—is false. Boeing did not commit to the State of Washington that it would build all of its 787s in that state. Boeing honored—and fully—all of its contractual commitments to the State of Washington long before the decision to locate the Company's new production facility in South Carolina. The notion that Boeing had somehow committed to Washington State to build all 787s in that state is neither mentioned nor even suggested either in the IAM's charge or in your recently filed complaint, and you never asserted that Boeing had made such contractual commitments to the State of Washington in the several discussions we have had with you in the months preceding your filing of the complaint. Had you done so, we would have explained to you why such an understanding was plainly incorrect. I call upon you to quickly and fully correct the record on this point. In addition to being wholly uninformed, it creates the impression that you and your office are now in search of a theory that will support a predetermined outcome, even a theory that has nothing to do with the National Labor Relations Act.

Your Statement That Boeing Sought To "Punish" Union Employees

Mischaracterizing what Boeing did by calling it a "transfer" of work, or suggesting that Boeing broke commitments to the State of Washington, is bad enough. Far more egregious, however, are the statements that have been made concerning the motives and intent of Boeing's leaders—specifically, that senior Boeing executives sought to "punish" union employees and to "threaten" them for

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their past and possible future strikes, through the Company's statements and its location of the second final assembly line in South Carolina.

The *New York Times* quotes you as saying that Boeing "had a *consistent message* that [the Company and its Executives] were doing this to *punish* their employees for having struck and having the power to strike in the future." (Steven Greenhouse, *Labor Board Case Against Boeing Points to Fights to Come*, New York Times, April 23, 2010, emphasis added.) Neither your complaint nor the post-hoc statements you and other officials of the NLRB have made since the filing of the complaint offers a single Boeing statement—let alone a "consistent message"—that Boeing acted to "punish" its employees, and, needless to say, you offer no evidence of this in your national media interview either.

The complaint alleges that Boeing Commercial Airplanes CEO Jim Albaugh stated that Boeing "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." (Complaint ¶6(e).) The complaint cites a March 2, 2010 interview of Mr. Albaugh by the Seattle Times, but does not purport to be quoting any particular statement. The NLRB's website, however, offers a "fact sheet" that quotes Mr. Albaugh as saying: "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." http://nlrb.gov/node/443

It would, of course, have been entirely permissible under existing law for Mr. Albaugh to have made a statement that the Company considered the economic costs of future strikes in its business decision to locate work in South Carolina—or even that it was the sole reason for such decision. But Mr. Albaugh did not even say either of these things. Mr. Albaugh's full statement was as follows:

> Well I think you can probably say that about all the states in the country right now with the economy being what it is. But again, the overriding factor was not the business climate and it was not the wages we're paying people today. It was that we can't afford to have a work stoppage every three years. *We can't afford to continue the rate of escalation of wages as we have in the past. You know, those are the overriding factors. And my bias was to stay here but we could not get those two issues done despite the best efforts of the Union and the best efforts of the company.*

The italicized sentences—which were deliberately omitted from your office's presentation of this quotation on its website—make clear that Mr. Albaugh was referencing two, rather than one, "overriding factors," only one of which is the risk of a future strike. These are critical omissions that directly contradict your apparent theory of this case.

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Moreover, no reasonable reader of Mr. Albaugh's interview would depict it as part of a "consistent message" that Boeing sought to "punish" its union employees. Mr. Albaugh expresses his "bias" in favor of Puget Sound and lauds the good-faith efforts of both sides. He explains that the company's preference was to locate the new production line in Puget Sound and that both the company and the union made good-faith efforts to accomplish that shared objective. Thus, when not misquoted, it is not even arguable that Mr. Albaugh's statement constitutes a "message" of "punishment" to the union for its past or future strike capability.

The complaint's attempt to depict a statement by Jim McNerney, Boeing's Chairman and Chief Executive Officer, as a threat to punish union employees is but another example of mischaracterization. The complaint alleges that Mr. McNerney "made an extended statement regarding 'diversifying [Boeing'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.'" (Complaint ¶6(a) (emphasis added).)

He did not say that at all. The allegation is a sleight-of-hand in two obvious respects, accomplished by the selective misquotation of Mr. McNerney's actual statements. First, Mr. McNerney was *not* making an "extended statement" about *why* Boeing selected Charleston. He was responding to a reporter's question about the cost of potentially locating a new assembly line in Charleston. And in fact, the decision to locate the new final assembly line in South Carolina had not even been made at the time Mr. McNerney's statements were made. Second, Mr. McNerney answered only the question as to comparative costs that was asked. Thus, in the passages you misquote and mischaracterize, he discussed the relative costs of a new facility in a location other than Puget Sound, versus the potential costs associated with "strikes happening every three to four years in Puget Sound." He did not say, as you allege through the complaint's misquotation, that Boeing selected Charleston "due to" strikes.

And Mr. McNerney did not even remotely suggest that what would later turn out to be the decision to open a new line in Charleston was *in retaliation for* such strikes, as you would have to establish to obtain the remedies you seek in your complaint. He did not say, he did not suggest, and he did not imply in any respect that Boeing intended to punish union employees or that a decision to locate a new facility other than in Puget Sound would or might be made to punish the union for past strikes or because of their power to strike in the future. Neither did he say, suggest, or imply that any existing union work was being transferred to Charleston. His answer cannot be cited in support of the legal theories in the complaint, much less the sweeping statement you made to the *New York Times* about Boeing's "consistent message" that Boeing and its executives sought to "punish" the Company's union employees.

Finally, Mr. McNerney's answer to a reporter's question *was not* "posted on Boeing's intranet website for all employees," much less posted for the purpose of

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sending an illegal message under the NLRA, as the complaint incorrectly and misleadingly suggests.

Nor do any of the other few statements you reference in your complaint—which I attach to this letter—remotely suggest an intent to "punish" the Company's unionized employees. Quite the contrary: these statements show, at most, that the Company considered (among multiple other factors) the risk and potential costs of future strikes in deciding where to locate its new final assembly facility. Those have been deemed permissible considerations by an unbroken line of Supreme Court and NLRB precedent for 45 years. Not only that, but, as you know, Boeing reached out to the IAM in an effort to secure a long-term agreement that would have resulted in placing the second line in Puget Sound. Although those negotiations were not successful, that effort alone defeats your wholly unsupported claim that Boeing executives sent a "consistent message" that Boeing's decision was intended to "punish" the union for past strikes.

What you said to a national newspaper, that Boeing made a billion-dollar decision to "punish" its employees, is a very serious—indeed, intentionally provocative—allegation against Boeing's leaders. Those leaders are deeply committed to all of the men and women who work for the Company, those represented by unions and those who are not. Your statement implies that Boeing's most senior executives acted out of personal spite and retribution toward its labor union, as opposed to acting in the interests of the Company, the Company's employees, and the Company's shareholders. You have no support for that statement whatsoever.

Your Statement That Boeing's Statements And Actions Were So Demonstrably Unlawful That You Were Compelled To File The Complaint

You also told the *New York Times* that, given the Company's so-called "consistent message" that the Company intended to "punish" the union for its prior strikes and its power to strike in the future, you had no choice but to issue a complaint. (Specifically, you said: "I can't not issue a complaint in the face of such evidence.") Among other reasons, that statement is puzzling, to say the least, in light of the course of Boeing's discussions with you and your office concerning this matter over the past six months. In particular, it is hard to reconcile with what has been your repeated statement that you did not believe this was a matter in which the NLRB should be involved and that you would take no action on the matter if Boeing agreed that it would not lay off any 787 employees in Puget Sound during the duration of its collective bargaining agreement with the IAM.

We of course understand that you reversed your position and abandoned the agreement that you yourself sought from Boeing after your further discussions with the complainant. But the point is this: It is exceedingly difficult to understand how you could have proposed and then agreed to such a resolution if, as you now say, you believed that the statements and actions by Boeing and its executives were so

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egregious that the law literally compelled a complaint by the NLRB. Of course, the law compelled no such thing.

Your Statement That The Complaint Does Not Seek To Close Charleston

Finally, there is the issue of your articulation of the remedy sought in this complaint. The complaint seeks an order directing Boeing to "have the [IAM] operate [Boeing's] second line of 787 Dreamliner aircraft assembly production in the State of Washington." Notwithstanding that you are seeking this remedy, your office has been at pains since filing the complaint to state publicly that this is not equivalent to an order that Boeing "close its operations in South Carolina." *Fact Check*, available at www.nlrb.gov (post of April 26, 2011). We and the public would be interested to hear your explanation as to why you believe that to be the case. Boeing's current plan is to produce a maximum of ten 787s per month: seven in Puget Sound, and three on the second line in Charleston. If the NLRB were to order Boeing to produce out of Puget Sound the three 787s per month that are planned to be assembled in Charleston, that would of course require the production of all of the Company's planned 787 production capacity in Puget Sound. That fact was explained repeatedly to you and your staff in our extended discussions before you filed the complaint.

* * * * * * *

Boeing intends to put this pattern of misquotations and mischaracterizations before the Administrative Law Judge, and ultimately, before the National Labor Relations Board itself in upcoming proceedings, Mr. Solomon. To the extent they reflect misunderstandings of the facts on your part, we would expect your prompt withdrawal of this complaint.

Sincerely yours,

J. Michael Luttig

J. Michael Luttig
Executive Vice President
& General Counsel
The Boeing Company

Attachment

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Statements Referenced in the NLRB Complaint

6(a) - James McNerney, 2009 3rd Quarter Earnings Call, October 28, 2009

. . . . There would be execution challenges associated with that choice [of Charleston]. But keep in mind that we've got a pretty good-sized operation down in Charleston today. The -- there would be some duplication. We would obviously work to minimize that. But I think having said all of that, diversifying our labor pool and labor relationship, has some benefits. I think the union IAM and the Company have had trouble figuring it out between themselves over the last few contract discussions.

And I've got to figure out a way to reduce that risk to the Company. And so some of the modest inefficiencies, for example, associated with a move to Charleston, are certainly more than overcome by strikes happening every -- every three or four years in Puget Sound and the very negative financial impact of the Company, our balance sheet would be a lot stronger today had we not had a strike last year. Our customers would be a lot happier today, had we not had a strike last year. And the 787 program would be in better shape had we not. And so I don't blame -- I don't blame this totally on the union. We just haven't figured out a way, the mix doesn't -- isn't working well, yet. So we've either got to satisfactory satisfy ourselves the mix isn't different or we have to diversify our labor base.

6(b) - "787 Second Line Questions and Answers," 10/28/09

Q3: Was one site a higher cost than the other?

A: All things taken into account, this decision will provide economic advantages by improving our competitiveness and reducing vulnerability to delivery disruptions due to a host of factors, from natural disasters to homeland security issues and work stoppages. We're electing not to get into how individual sites fared in specific areas of the evaluation.

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Q8: We understand you were pushing the union for a no-strike agreement and came close to getting a 10-year deal. Obviously you didn't reach an agreement. Was that the factor that tipped the decision?

A: It was an important part of our discussion with the union, but it wasn't the only factor in our decision. In the final analysis, this came down to ensuring our long-term global competitiveness and diversifying the company to protect against the risk of production disruptions that can occur for a variety of reasons, from natural disasters, to homeland security threats, to work stoppages. While we didn't reach a long-term agreement, we felt our discussions with the IAM were productive and focused on the

right things -- global competitiveness (including emerging competitors), and ways to sustain a reliable, on-time flow of deliveries to our customers. We look forward to moving forward with the IAM in a positive way to grow our business in an increasingly competitive market.

* * * * * * * *

Q26: You say that having a second line in Charleston reduces risk, but if the IAM goes on strike in the Puget Sound again they will halt your production lines. What does a second line in another state really do for you then?

A: Geographically diversifying final assembly on the 787 will protect a portion of deliveries against disruption from both natural and man-made events, including work stoppages due to labor disputes. Having the second line will also give us assurance and flexibility in how we introduce derivatives such as the 787-9.

6(c) - *Seattle Times* article, December 7, 2009

Boeing spokesman Jim Proulx cited strikes in the Puget Sound region as a major factor in the decision. With a second supplier for every part, Boeing potentially could continue producing Dreamliners in South Carolina even if the Machinists went on strike here.

"Repeated labor disruptions have affected our performance in our customers' eyes," Proulx said. "We have to show our customers we can be a reliable supplier to them." The second production line "has to be able to go on regardless of what's happening over here," he added.

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Ray Conner, vice president and general manager of supply-chain management and operations, sent a message Monday informing all Boeing Commercial Airplanes managers of the dual-sourcing decision.

"We will immediately begin identifying, selecting and contracting with suppliers to stand up fully operational coproduction by 2012," Conner's message said.

Proulx said Boeing has not determined how much work will be replicated within the company in the new Charleston facility and how much may go to outside suppliers.

When Boeing broke ground on its Charleston assembly line in November, the company disclosed extensive plans for other buildings at the facility. Among these is a "fin and rudder shop," which suggests the tail fin may be built at Boeing Charleston.

But Proulx said, "It's too soon to say what will go where."

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He said the replication of parts sourcing also would "accommodate the ramp-up" required to shift to a planned rollout of 10 planes a month by the end of 2013.

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Conner's message said the union knew this was coming.

"We informed the (IAM) of our plans to begin dual sourcing during the company/union discussions preceding our decision to place the second 787 line in South Carolina," Conner's message to managers stated. "We remain committed to strengthening our working relationship with the union."

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Boeing's Proulx said potential external suppliers are being assessed "based on capabilities, based on their ability to produce high-quality components and at the best value."

"We'll review supplier expertise, and we'll ensure that the right level of training and oversight is in place to make sure the performance standards are met," he said.

Conner's message to managers emphasized the decision means duplication, not replacement, of work done in this region.

"We are not moving any work that Boeing employees are currently performing — we are just adding additional sources," Conner said.

6(d) – *Puget Sound Business Journal* Article, December 8, 2009

"Dual-sourcing and co-production will allow us to maintain production stability and be a reliable supplier to our customers," he said in the memo.

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Boeing spokesman Jim Proulx said it was "too early" to tell if the new production will be contracted out or done by Boeing itself at the new South Carolina site, or elsewhere in the country.

He said this is not indicative of a wholesale movement of existing production away from this region.

"There will be no jobs lost as part of this move. There are no plans to take this work away," he said.

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6(e) -- Jim Albaugh Interview with the *Seattle Times*, March 2, 2010

> Well I think you can probably say that about all the states in the country right now with the economy being what it is. But again, the overriding factor was not the business climate and it was not the wages we're paying people today. It was that we can't afford to have a work stoppage every three years. We can't afford to continue the rate of escalation of wages as we have in the past. You know, those are the overriding factors. And my bias was to stay here but we could not get those two issues done despite the best efforts of the Union and the best efforts of the company.

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