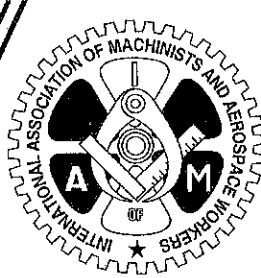


**International
Association of
Machinists and
Aerospace Workers**



9000 Machinists Place
Upper Marlboro, Maryland 20772-2687

Area Code 301
967-4500



OFFICE OF THE GENERAL VICE PRESIDENT

DL 751

May 11, 2011

Subj: Complaint and Request for Inquiry

Select Committee on Ethics
United States Senate
SH-220 Hart Senate Office Building
Washington, DC 20510

To the Select Committee on Ethics of the United States Senate:

I am Christopher Corson, General Counsel of the International Association of Machinists and Aerospace Workers. The IAM is proud to be the collective bargaining representative for thousands of Boeing Company employees in Washington, a highly skilled workforce that has for generations built the finest commercial airliners in the world for the company. We are also proud to represent hundreds of thousands of other workers in diverse industries across the United States and Canada.

I am filing this complaint and request for inquiry out of concern that one or more members of the United States Senate are interfering with and attempting to halt a law enforcement proceeding of the National Labor Relations Board, in which the NLRB is addressing and attempting to remedy illegal retaliation by Boeing against IAM-represented employees. These workers deserve to have their case heard by the law enforcement agency that is responsible for protecting them, according to the rule of law, and not to have that process skewed or stopped by pressure or bullying from Senators.

On April 20, 2011, the NLRB issued a complaint against Boeing, based on unfair labor practice charges that had been filed in March of 2010 by IAM District Lodge 751 in Seattle, Washington. The matter concerns assembly of the company's new 787 Dreamliner by IAM-represented employees in the Puget Sound area. As the complaint recites, Boeing announced to the press over the course of several months in 2009 and 2010 that it had decided to move a portion of 787 assembly work to South Carolina. According to the company's statements at that time, its principal reason was that its unionized employees had engaged in concerted activity in the past and could do so in the future. It is undisputed that such activity was and is protected by the National Labor Relations Act.

Taking work away from employees in retaliation for legally protected activity is illegal under well-established NLRB and judicial precedents. The traditional remedy is an order that the

work not be moved. On the facts and the law, this case is fairly straightforward, a point made by the NLRB's Acting General Counsel, Lafe Solomon, in a press release on May 9th:

“Contrary to certain public statements made in recent weeks, there is nothing remarkable or unprecedented about the complaint issued against the Boeing Company on April 20. The 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 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.

“It is important to note that the issuance of a complaint is just the beginning of a legal process, which now moves to a hearing before an administrative law judge. That hearing, scheduled for June 14 in Seattle, is the appropriate time and place to argue the merits of the complaint.”

As the complaint also makes clear, the NLRB is only seeking to address the illegal retaliation committed by Boeing and to correct the coercive effect of that retaliation on the company's workers and their rights. The complaint specifically states that Boeing is free to make non-discriminatory decisions to place its work in South Carolina or elsewhere. The complaint can be found on the NLRB's website.¹ As noted in Mr. Solomon's press release, a hearing before an administrative law judge is currently set for June 14th in Seattle.

I am bringing this matter to the Select Committee on Ethics, because I am concerned that one or more Senators have pressured and are continuing to try to pressure the NLRB to drop this law enforcement proceeding in possible violation of Senate Rule 43.

I believe that prior to the NLRB's issuance of the Boeing complaint on April 20th, Senator Lindsey Graham communicated with NLRB Acting General Counsel Lafe Solomon in one or more attempts to pressure him not to do so. After issuance, I believe that Senator Graham continued to communicate with Mr. Solomon in one or more attempts to pressure him to withdraw it. I also believe that these communications included threats that the Senator would seek to defund or otherwise adversely affect the funding of the NLRB if the Boeing complaint were pursued. Senator Graham also made that threat publically in a press release dated April 20th, in which he said, “As Senator, I will do everything in my power, including introducing legislation cutting off funding for this wild goose chase, to stop the NLRB's frivolous complaint.”²

On May 4th, Senator Graham joined 18 other Senators in a letter to President Obama that refers to the Boeing complaint and urges the President to withdraw Mr. Solomon's nomination (along with a nominee to the NLRB's Board). The letter goes on to state that if the President does

¹http://www.nlr.gov/sites/default/files/documents/443/cpt_19-ca-032431_boeing__4-20-2011_complaint_and_not_hrg.pdf.

²http://lgraham.senate.gov/public/index.cfm?FuseAction=PressRoom.PressReleases&ContentRecord_id=74179e31-802a-23ad-4e6e-3b1394738c8d.

not do so, “[w]e will vigorously oppose both nominations, vote against cloture and use all procedural tools available to defeat their confirmation in the Senate.” Perhaps most importantly for Senate Rule 43, the letter makes clear that Senator Graham and the other Senators intend to take these actions without regard to the merits or ultimate disposition of the Boeing complaint: *i.e.* whether Boeing had actually broken the law or not.³ Coupled with Senator Graham’s other demands on Mr. Solomon that he withdraw the complaint, it seems clear that this letter is part of his overall effort to pressure Mr. Solomon to stop a law enforcement proceeding and to threaten his job, regardless of whether Boeing committed the illegal acts for which it has been charged. A copy of the May 4, 2011 letter is attached.

There may be other communications by Senator Graham with Mr. Solomon, with other persons in the NLRB, or with persons outside of the NLRB that should be examined under Senate Rule 43. The examples I have given show extraordinary politicization of a law enforcement matter, and I do not believe that a Senator or any other politician should be trying to interfere with and prevent a law enforcement trial. This trial is the only chance for Boeing’s employees in Washington to have their rights vindicated. They deserve to have law enforcement proceed according to the rule of law, and I am requesting that the Select Committee on Ethics take whatever action may be appropriate to protect the integrity of the legal process.

I would ask the Committee to consider the following portions of Chapter 8 of the Senate Ethics Manual. There may be other relevant sections.

- “In reviewing the type and nature of agency proceeding [as to which a Member is considering intervention], the Committee has recommended that a Member consider . . . the kind of agency involved and the nature of the agency proceedings. . . . In reviewing the type and nature of agency proceeding, the Committee has recommended that a Member consider whether the agency is performing a quasi-judicial, adjudicative, or enforcement function.” (Manual p. 178). The NLRB is the Federal agency charged with enforcement of the National Labor Relations Act. It receives charges from persons who believe that they have suffered violations of that Act, and it will issue a complaint, after investigation, when it finds that the charge has merit. The complaint is then tried to an administrative law judge in a formal adjudicatory proceeding that is on the record. Appeals may be taken to the five-member National Labor Relations Board and thereafter to a United States Court of Appeals. The NLRB’s processes with respect to District 751’s charge and the Boeing complaint seem clearly to fit the “quasi-judicial, adjudicative, or enforcement function” language of the Manual.
- Regarding intervention in agency proceedings, the Manual states that “communications with an agency with respect to a matter which may be the subject of litigation in court is, nevertheless, generally permitted . . . where the agency is *not* engaged in an on-going enforcement, investigative, or other quasi-judicial proceeding with respect to the matter . . .” (Manual p. 179, emphasis added). Since the NLRB’s proceedings with respect to the Boeing complaint are clearly “an on-going enforcement, investigative, or other

³ The beginning of the letter’s fifth paragraph starts, “If the NLRB prevails . . .,” showing that the writers intend to carry out their threats even if the complaint is found to be meritorious.

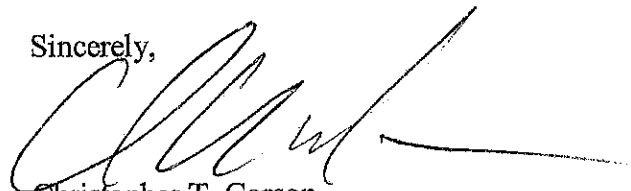
quasi-judicial proceeding," it would seem that attempts to pressure the agency and stop its law enforcement activities should not be permitted.

- In the portion of the Manual that reprints part of the 1991 Keating Report, it states on pp. 181 and 182 that stricter standards are applied to intervention in agency proceedings that are on-the-record adjudications as opposed to rulemakings. The Manual recognizes that on-the-record proceedings are, by their very nature, supposed to be conducted on a formal record, and decisions are to be made only on that record. Thus, extraneous influences are not supposed to be part of the process, and Members should be aware of that. The Boeing complaint is an on-the-record adjudication that will play out through an ALJ, the Board, and most likely the courts. Its prosecution and the agency's decision making should not be pressured or altered extraneously.
- In the Manual's discussion of how Senate Rule 43 may apply somewhat differently to agency rulemakings as opposed to adjudications, it makes specific reference to a case in which "a threat by a Member of Congress to cut funding to an agency unless a particular result was achieved in a rulemaking was deemed 'extraneous' and sufficient to set aside the agency action." (Manual, p. 182). As noted above, Senator Graham has made one or more threats of this nature with respect to the Boeing complaint, and the stricter ethics standard for adjudicatory proceedings would indicate *a fortiori* that such threats could be violations of Rule 43.

In cities and towns all across America, our citizens would cry foul if a councilman used his office to put pressure on a police chief or a judge to drop a law enforcement matter. No one would think it acceptable for such a politician to threaten to cut funding from the police department or the court system or to threaten the job of the police chief, in order to prevent a law enforcement matter from being presented to a judge. Political interference in order to stop the trial of an influential person charged with violating the law is wrong under the rule of law. I hope Senate Rule 43 embodies such commonsense restraints on members of the United States Senate.

I appreciate the Select Committee's consideration of this complaint and request for inquiry. I can be reached at the address given above or by phone (301-967-4510) or email (ccorson@iamaw.org). I would be glad to cooperate with the Select Committee in any way I can.

Sincerely,



Christopher T. Corson
GENERAL COUNSEL

International Association of Machinists and
Aerospace Workers

CTC/rc

Attachment

United States Senate

WASHINGTON, DC 20510

May 4, 2011

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

In your State of the Union address, you said: "We know what it takes to compete for the jobs and industries of our time. We need to out-innovate, out-educate, and out-build the rest of the world. We have to make America the best place on Earth to do business."

We agree. Global competition for business and jobs is more important than ever as our country struggles to recover from the lingering recession and cope with the massive debt burden imposed on the economy by increased government spending.

Unfortunately, recent actions by your handpicked political appointees at the National Labor Relations Board are making it more difficult for America to win the future.

The NLRB, at the behest of Acting General Counsel Lafe Solomon, has taken unprecedented legal action against The Boeing Company to prevent it from expanding productions into South Carolina, a state that assures workers the freedom not to join a union as a condition of employment. We consider this an attack on millions of workers in 22 right-to-work states, as well as a government-led act of intimidation against American companies that should have the freedom to choose to build plants in right-to-work states.

If the NLRB prevails, it will only encourage companies to make their investments in foreign nations, moving jobs and economic growth overseas. America will not win the future if Washington penalizes workers in states that have discovered winning economic strategies. Right-to-work states have faster job growth, faster income growth, and faster population growth than forced-unionism states. This winning strategy should be duplicated nationwide. Instead, successful workers rights are being stamped out by political appointees who serve at your pleasure and have not been confirmed by the Senate.

You nominated Mr. Solomon to become General Counsel for NLRB and serve a full four-year term on January 5, 2011, yet, members of the Senate have not been able to vet him. Mr. Solomon has not appeared for a Senate confirmation hearing, nor has he been subjected to a full Senate confirmation vote. Additionally, you granted a recess appointment to Craig Becker, a former lawyer for the Service Employees International Union and AFL-CIO, to become one of the five members of the NLRB's powerful board over widespread, bipartisan objections in the Senate to his nomination. The Senate rejected his nomination in February 2010. All 41 Republican senators wrote you a letter in March 2010 urging you not to give Mr. Becker a recess

appointment, which you did later that month, effectively circumventing the will of the U.S. Senate.

The Senate has been unacceptably denied the ability to exercise its constitutional duty of advise and consent in regards to the NLRB. In light of the NLRB's recent actions that would have a deleterious effect on job creation and economic opportunity across the country, it is time to hold the NLRB accountable.

We urge you to withdraw both Mr. Solomon's and Mr. Becker's nominations to their respective positions immediately. If not, we will vigorously oppose both nominations, vote against cloture and use all procedural tools available to defeat their confirmation in the Senate.

Sincerely,

Joni DeMott

William DeLoach

Ron Johnson

Chuck Grassley

Pat Romney

Jeff Flake

Kelly Ayotte

John Thune

David Vitter

Rand Paul

Lamar Smith

Orin Hatch

Kay Bailey Hutchison

Richard Shelby

Tommy Tuberville

Tom Cohan
John McLean

D. L.