The investigative report titled OIG-I-473 that was provided to the Committee on Homeland Security and Governmental Affairs begins on page 154 and ends on page 162.

United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF INSPECTOR GENERAL

Washington, DC 20570-0001

December 21, 2012

Mr. Adam Butschek
Deputy Director of Investigations
and Investigative Counsel
Cause of Action
2100 M Street, NW
Suite 170-247
Washington, DC 20037-1233

Dear Mr. Butschek:

This letter is in response to your Freedom of Information Act (FOIA) request, dated September 10, 2012, seeking, for the time period of September 1, 2011 until the present, the following:

1) All records, including e-mails, referring or relating to Cause of Action's November 22, 2011 request for an NLRB OIG investigation.

2) All records referring to or related to Congressman Kline's letter of April 13, 2012.

3) Any and all investigative reports or documents submitted to Congress regarding the substance of Chairman Kline's April 13, 2012 letter.

4) All records referring to or related to allegations of *ex parte* communications from officials of the NLRB pertaining to the Boeing matter referenced above.

5) All records pertaining to concluded investigations or determinations made regarding Cause of Action's November 22, 2011 request for investigation.

6) All records of any concluded investigations, both criminal and administrative, into NLRB *ex parte* communications regarding the Boeing matter referenced above.

7) All records referring or relating to why investigative reports such as Reports concerning OIG-I-467 and OIG-I-468 are not publicly posted by the NLRB OIG.

8) All documents referring or relating to the procedures used by the NLRB OIG to determine whether information or allegations are sufficiently "credible" to warrant the launching of an investigation.

9) Any and all records concerning referrals by the NLRB OIG to the U.S. Department of Justice.

The request has been assigned a FOIA tracking number **OIG-2012-022.**

In our original responses, sent electronically on October 5 and 6, 2012, we declined to confirm or deny the existence of some or all of the information sought in Requests 1 through 6 and 9, on the grounds that any such confirmation or denial would harm the interest protected by FOIA Exemptions 6, 7(C), and 7(D). Since that time, the Committee on Education and the Workforce of the U.S. House of Representatives posted a copy on its Web site of our Report of Investigation in case OIG-I-473, addressing allegations of ex parte communications. In light of those changed circumstances, we hereby amend our response as follows:

1) All records, including e-mails, referring or relating to Cause of Action's November 22, 2011 request for an NLRB OIG investigation.

2) All records referring to or related to Congressman Kline's letter of April 13, 2012.

3) Any and all investigative reports or documents submitted to Congress regarding the substance of Chairman Kline's April 13, 2012 letter.

4) All records referring to or related to allegations of *ex parte* communications from officials of the NLRB pertaining to the Boeing matter referenced above.

Twelve pages of documents responsive to these requests have previously been provided as "Enclosure 1" in our original response, sent electronically on October 6, 2012. These documents were not included in the current search.

After a complete search and review of the responsive documents, the undersigned has determined that a significant portion of the information you have requested is privileged from disclosure under exemptions to the FOIA. We have enclosed a number of documents found to contain information reasonably segregable from information privileged from disclosure under exemptions to the FOIA. See 5 U.S.C. § 552(b). Deletions have been made on 122 pages of the enclosed documents pursuant to the policies embodied in Exemptions 5, 6, 7(A), 7(C), and 7(D) of the FOIA, for the reasons detailed below.

With regard to the disclosure of the Investigative Exhibits to the Report, we received waivers in order to release Exhibits 2, 3, 5, 7, and 9 without redaction. We did not seek waivers from former employees, and therefore Exhibits 4, 6, and 8 contain deletions. Investigative Exhibit 10 is a non-public document that originated with the Agency. Accordingly, we are referring this document to the Agency to send you a determination regarding its disclosure.

Additionally, our search revealed a large volume of pages of potentially responsive documents related to the Boeing case, 19-CA-32431, which originated from the NLRB. These documents were previously released pursuant to the FOIA by the Agency on disks labeled FOIA ID/LR-2011-0727 (Disks 001-011) and on a disk labeled FOIA ID/LR-2012-0125 (Appeal). By

copying this letter to the NLRB FOIA Officer, we refer these documents to the Agency to send you a determination regarding their disclosure.

All other responsive documents were found, in their entirety, to be privileged from disclosure pursuant to Exemptions 5, 6, 7(A), 7(C), and/or 7(D) of the FOIA, for the reasons detailed below.

Although we have issued an Investigative Report, we have not completed all of our investigative activity, and OIG-I-473 remains open at the time of this response. The FOIA Exemption 7(A) allows an agency to withhold records included in a law enforcement file in a pending or prospective proceeding when disclosure "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552 (b) (7)(A). The disclosure of the documents that are in the law enforcement file and encompassed by your request would harm the ongoing investigation by giving subjects or potential subjects advanced information on the scope and nature of the ongoing investigatory activities. See NLRB v. Robbins Tire and Rubber Co., 437 U.S. 214 (1978). Further, disclosure of law enforcement records in an open case, including witness statements, would risk witness intimidation, thereby interfering with the pending proceedings. See Robbins Tire, 437 U.S. at 239-41. Because the Report of Investigation in case OIG-I-473 has been made public by the Committee on Education and the Workforce, however, we have determined that the release of certain documents from the investigative file directly relating to the released material will no longer interfere with the ongoing proceedings. These documents are included in the enclosed package of documents. All other documents included in the investigative file are withheld in full pursuant to Exemption 7(A).

In addition to the protections of Exemption 7(A), investigative material involving investigations by the Office of the Inspector General is exempt from disclosure pursuant to Exemptions 6, 7(C), and 7(D) of the FOIA, 5 U.S.C. §§ 552 (b) (6), (7)(C), and 7(D). In the processing of investigations, the Office of the Inspector General obtains much information from individuals who would be reluctant or who would refuse to supply such information if it were routinely disclosed pursuant to a request under the FOIA. In carrying out his responsibilities, the Inspector General must be able to obtain all potentially relevant information. The protection of the identities of individuals and the substance of the information they provide is an important means of assuring his continuing ability to obtain such relevant information. Compelled disclosure of the information would substantially deter voluntary cooperation, hinder obtaining information from all potential sources and, consequently, substantially interfere with present and future enforcement proceedings. See, e.g., Robbins Tire and Rubber Co., 437 U.S. at 239-243; Wellman Industries Inc. v. NLRB, 490 F. 2d 427 (4th Cir.), cert. denied 419 U.S. 834. Additionally, release of information about individuals referred to in such files would constitute a clearly unwarranted invasion of their personal privacy, and you have not satisfied your burden of proof as to the public interest in the disclosure of such information that would outweigh those privacy interests. See, e.g., Department of Justice v. Reporters Committee, 489 U.S. 749 (1989); Department of the Air Force v. Rose, 425 U.S. 352 (1976).

I also conclude that legal memoranda and internal reports and recommendations are privileged from disclosure by Exemption 5 of the FOIA, 5 U.S.C. § 552 (b) (5), since they are intra-agency memoranda and attorney work-products that would not be available by law to a

party other than an agency in litigation with this Agency. The legislative history of Exemption 5 makes it clear that this subsection of the FOIA was designed to protect and promote the objectives of fostering frank deliberation and consultation within the Agency and to prevent premature disclosure of recommendations which could disrupt the decision-making process. Legal memoranda, staff recommendations, and preliminary reports internal to the Office of Inspector General and/or between the Office of Inspector General and the Board and General Counsel clearly reflect the deliberative and consultative process of the Agency that Exemption 5 protects from forced disclosure. Cf. NLRB v. Sears, Roebuck and Co., 421 U.S. 132 (1975).

5) All records pertaining to concluded investigations or determinations made regarding Cause of Action's November 22, 2011 request for investigation.

Our search revealed no responsive documents. To the extent that this request seeks records pertaining to "concluded investigations" regarding Cause of Action's request for investigation, there are no "concluded investigations" relating to the allegations made by Cause of Action. To the extent that the Investigative Report posted by the Committee on Education and the Workforce constitutes a concluded determination regarding Cause of Action's request for investigation, it is included with the documents enclosed.

6) All records of any concluded investigations, both criminal and administrative, into NLRB *ex parte* communications regarding the Boeing matter referenced above.

To the extent that this request seeks records pertaining to concluded *administrative* investigations, our search revealed no responsive documents, as the investigation in case OIG-I-473 remains open. To the extent that this request seeks records pertaining to *criminal* investigations, the Office of Inspector General neither admits nor denies the existence of the information you seek because any such confirmation or denial would harm the interest protected by FOIA Exemptions 6, 7(C), and 7(D). See 5 U.S.C. §§ 552 (b) (6), (7)(C), and 7(D).

7) All records referring or relating to why investigative reports such as Reports concerning OIG-I-467 and OIG-I-468 are not publicly posted by the NLRB OIG.

Our search revealed one responsive document, which was provided with our response sent electronically on October 6, 2012. Our response to this request is unaffected by the change in circumstances.

8) All documents referring or relating to the procedures used by the NLRB OIG to determine whether information or allegations are sufficiently "credible" to warrant the launching of an investigation.

Our search revealed one responsive document, which was provided with our response sent electronically on October 5, 2012. Our response to this request is unaffected by the change in circumstances.

9) Any and all records concerning referrals by the NLRB OIG to the U.S. Department of Justice.

Our response to this request is unaffected by the change in circumstances. Beyond the material previously provided in our October 6, 2012 response, the Office of Inspector General

neither admits nor denies the existence of any other documents responsive to this request because any such confirmation or denial would harm the interest protected by FOIA Exemptions 6, 7(C), and 7(D). See 5 U.S.C. §§ 552 (b) (6), (7)(C), and 7(D).

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

I am responsible for the above determination. You may obtain a review thereof under the provisions of Section 102.177(c)(2)(v) of the NLRB Rules and Regulations by filing an appeal with the Chairman, National Labor Relations Board, 1099 14th Street, NW, Washington, D.C. 20570, within 28 calendar days from the date of this letter, such period beginning to run on the calendar day after the date of this letter. Thus, the appeal must be received by the close of business (5:00 p.m.) on January 18, 2013. Any appeal should contain a complete statement of the reasons upon which it is based.

Sincerely,

Jennifer Matis
Counsel to the Inspector General

Enclosures

cc: NLRB FOIA Officer (w/o enc.)

HL-A-12-045

Opened related investigation OIG-I-473

Advocates for Government Accountability

A 501(c)(3) NONPROFIT CORPORATION

TELEPHONE: (202)-507-5880
WEB SITE: CAUSEOFACTION.ORG
2100 M STREET
SUITE 170-247
WASHINGTON, D.C. 20037

November 22, 2011

VIA E-MAIL AND FIRST CLASS MAIL

David P. Berry
Inspector General
National Labor Relations Board
1099 14th Street, NW Room 9820
Washington, DC 20570
E-mail: OIGHOTLINE@nlrb.gov

RE: REQUEST FOR INVESTIGATION

Dear Inspector General Berry:

We write on behalf of Cause of Action, an independent 501(c)(3) public interest organization that uses public advocacy and legal reform strategies to ensure greater transparency in government, protect taxpayer interests and promote economic freedom.

On August 30, 2011, Cause of Action sent a Freedom of Information Act ("FOIA") to the National Labor Relations Board ("NLRB") requesting communications and records concerning the NLRB's decision to sue Boeing. On September 12, 2011, Cause of Action sent a FOIA request to the NLRB requesting the daily calendars of Board members, documents concerning the operating budgets of NLRB regional offices, and certain advertising documents. On the basis of the documents received and reviewed by Cause of Action, we have serious concerns about (i) *ex parte* communications, (ii) pro-union bias, and (iii) a fundamental lack of internal accountability and oversight at the National Labor Relations Board.

RECEIVED, NLRB
WASHINGTON, D.C. 20570
2012 APR 18 AM 8:11
OFFICE OF THE
INSPECTOR GENERAL

I. Former Member and Chairman Wilma Liebman and Acting General Counsel Lafe Solomon Engaged in Improper *Ex Parte* Communications.

An e-mail dated January 7, 2011 reflects that just a few months before General Counsel Lafe Solomon filed suit against Boeing, there was a taxpayer-funded meeting between Seattle NLRB region-19 regional director Richard Ahearn, General Counsel Lafe Solomon, and the International Association of Machinists lawyers:[1]

From: Baniszewski, Joseph
Sent: Friday, January 07, 2011 1:01 PM
To: Siegel, Richard A.
Cc: Roberts, Crystal; Ahearn, Richard L.; Snook, Dennis
Subject: Travel Order for Region 19 RD Rich Ahearn

Crystal,

Please prepare a travel order for Region 19 RD Rich Ahearn to travel to Washington January 18, 19 and 20, to meet with the General Counsel, Advice and lawyers representing the Machinists' Union in Boeing Corp., 19-CA-32431.

Rick,

Please note your approval and forward this E Mail to Crystal.

Thanks,

Joe

Within the same month that Richard Ahearn was meeting with the General Counsel, Department of Advice, and the IAM's lawyers, Richard Ahearn sent an e-mail to Solomon and Kearney, among others, citing an anti-Boeing article in the *Seattle Times*.[2]

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[1] E-mail. Joseph Baniszewski to Richard A. Siegel, Crystal Roberts, Richard L. Ahearn and Dennis Snook (Jan. 7, 2011, 13:01 EST) [NLRB-FOIA-00000570].
[2] E-mail, Richard Ahearn to Lafe Solomon *et al.*, (Jan. 27, 2011, 10:52 EST) [NLRB-FOIA-00000822].

Microsoft Outlook

From:	Ahearn, Richard L.
Sent:	Thursday, January 27, 2011 10:52 AM
To:	Solomon, Lafe E.; Mattina, Celeste J.; Kearney, Barry J.; Farrell, Ellen; Willen, Debra L; Katz, Judy; Omberg, Bob
Subject:	Boeing's next delivery: bonuses

Boeing's next delivery: bonuses

Despite lower revenue in 2010 than a year earlier and higher-than-expected spending on the 787 and 747-8 programs, Boeing booked $4.5 billion in pretax profits. As a result, about 48,500 Washington state employees will qualify for bonuses worth almost three weeks' extra pay.

http://seattletimes.nwsource.com/html/businesstechnology/2014048927_boeing27.html

Normally, these communications would not be problematic under the law; but where evidence has shown Lafe Solomon to have discussed the Boeing matter with Chair Wilma Liebman, the above communications may reflect a knowing intent to influence the Board's decision-making. Indeed, these e-mails reflect post-Boeing lawsuit communications between Public Affairs Director Nancy Cleeland and Richard Ahearn,[3] between Nancy Cleeland and Lafe Solomon and Chair Wilma Liebman,[4] between Richard Ahearn and Lafe Solomon, Nancy Cleeland, and Barry Kearney,[5] from New Media specialist Anthony Wagner to Wilma Liebman, Lafe Solomon, and Nancy Cleeland regarding Boeing,[6] from Nancy Cleeland to Richard Ahearn and Barry Kearney,[7] and from Adam Naill of the Senate Health, Education, Labor and Pensions (HELP) Committee to Jose Garza of NLRB Public Affairs, who forwarded Senator Harry Reid's statements in support of the NLRB's decision to sue Boeing to Lafe Solomon and Wilma Liebman:

> Mr. Reid: Madam President, I Recognize That we're in a partisan environment . . . Founders created a system of checks and balances. . . . Long after that system was created [a] new independent federal agency was created in the same spirit of checks an[d] balances. That agency is the National Labor Relations Board. It acts as a check on employers an[d]

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[3] E-mail, Nancy Cleeland to Richard Ahearn (Apr. 21, 2011 14:29 EST) [NLRB-FOIA-00000573].
[4] E-mail, Nancy Cleeland to Lafe Solomon, Wilma Liebman, Jose Garza, & John Ferguson (Apr. 28, 2011 15:14 EST) [NLRB-FOIA-00000763]; E-mail, Nancy Cleeland to Lafe Solomon, Wilma Liebman, Jose Garza, & John Ferguson (Apr. 28, 2011 15:20 EST) [NLRB-FOIA-00000658-659].
[5] *See* E-mail, Nancy Cleeland to Richard Ahearn (May 3, 2011, 14:27 EST) [NLRB-FOIA-00000588].
[6] E-mail, Anthony Wagner to Wilma Liebman, Lafe Solomon, Nancy Cleeland, *et al.* (May 3, 2011, 16:38 EST) [NLRB-FOIA-00001063].
[7] E-mail, Nancy Cleeland to Barry Kearney & Richard Ahearn, May 4, 2011, 11:25 EST) [NLRB-FOIA-00000593].

> employees alike. It safeguards employees' rights to unionize or not unionize. It mediates allegations of unfair labor. . . . The acting general counsel is a man who is as nonpartisan and independent . . . . Last week they issued a complaint against Boeing. . . . Our Republican colleagues have attacked the NLRB and tried to poison the decision process. For example, every Republican Senator on the "HELP" Committee, and, Madam President, let's remind everyone the L in HELP stands for labor, they sent a letter to the acting general counsel defending Boeing. The [fact that the] letter itself was sent six weeks before a hearing [took] place seems questionable at the very best. But these 10 Republicans went further. They went out of their way to link their request to the acting General Counsel's pending nomination. If there [was] ever a case of intimidation, that sounds like it to me.[8]

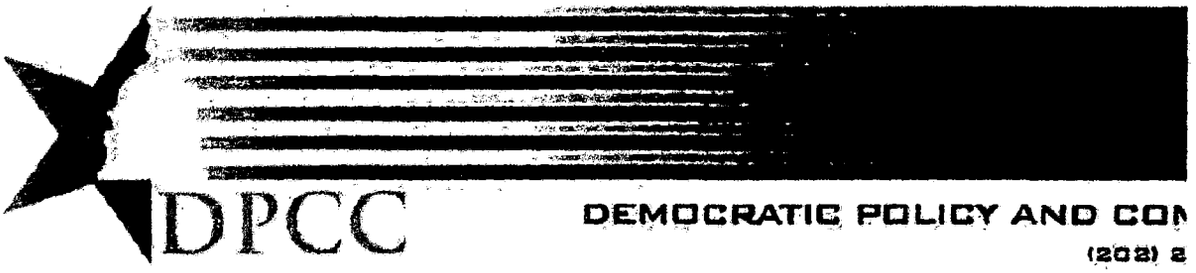
An additional e-mail from Richard Ahearn to NLRB Executive Secretary Les Heltzer forwarded a press release from the Democratic Policy and Communications Center, which quoted Senator Reid's above remarks:[9]

[8] E-mail from Jose Garza to Lafe Solomon, Wilma Liebman, Nancy Cleeland *et al.* (forwarding e-mail from Adam Naill (Senate HELP) to Jose Garza), (May 11, 2011, 9:45 EST) [NLRB-FOIA-00000777-778].
[9] E-mail from Richard Ahearn to Les Heltzer (May 11, 2011 14:54 EST) [NLRB-FOIA-00000640-642].

Microsoft Outlook

From:	Ahearn, Richard L.
Sent:	Wednesday, May 11, 2011 2:54 PM
To:	HELTZER, LES (Hdqs)
Subject:	Sen REID - MUST KEEP INDEPENDENT AGENCIES INDEPENDENT - OPERATE FREELY AND WITHOUT POLITICAL PRESSURE
Attachments:	image001.jpg

http://democrats.senate.gov/newsroom/record.cfm?id=332789&



For Immediate Release
Date: Wednesday, May 11, 2011

CONTACT: Jon Summers, (202) 224-2939

REID: WE MUST KEEP INDEPENDENT AGENCIES INDEPENDENT, ALLOW THEM TO OPERATE FREELY AND WITHOUT POLITICAL PRESSURE

An e-mail from IAM's attorney David Campbell to Richard Ahearn earlier that day revealed that Ahearn merely forwarded to others at the NLRB the press release he received from David Campbell:[10]

[10] E-mail, David Campbell to Richard Ahearn (May 11, 2011, 11:18 PST) [NLRB-FOIA-00000672].

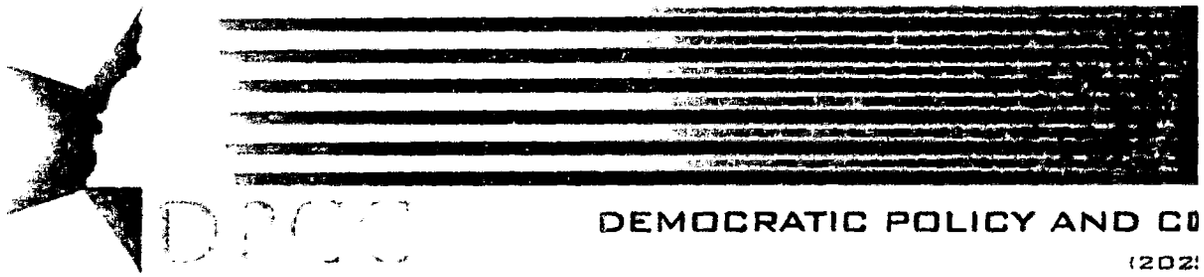
Microsoft Outlook

From:	David Campbell [campbell@workerlaw.com]
Sent:	Wednesday, May 11, 2011 11:18 AM
To:	Aheam, Richard L.
Subject:	FW: Sen REID - MUST KEEP INDEPENDENT AGENCIES INDEPENDENT - OPERATE FREELY AND WITHOUT POLITICAL PRESSURE
Attachments:	image001.jpg

Thanks, Dave

Sincerely, David Campbell
campbell@workerlaw.com
Schwerin Campbell Barnard Iglitzin & Lavitt
18 W Mercer Suite 400
Seattle, Washington 98119-3971
Phone (206)285-2828: FAX (206)378-4132
This communication is protected by the attorney client and attorney work-product privileges. Please do not copy, forwar or append.

http://democrats.senate.gov/newsroom/record.cfm?id=332789&



For Immediate Release
Date: Wednesday, May 11, 2011

CONTACT: Jon Summers, (202) 224-2939

REID: WE MUST KEEP INDEPENDENT AGENCIES INDEPENDENT, ALLOW THEM TO OPERATE FREELY AND WITHOUT POLITICAL PRESSURE

Under the Administrative Procedures Act ("APA"), a member of the NLRB must not make a prohibited communication with interested persons outside the agency.[11] The American Bar Association's Model Code of Judicial Conduct bars *ex parte* communications except those limited to "consultation with court personnel . . . or with other judges."[12] The NLRB's own *ex parte* rules prohibit communications with outside, interested persons.[13] The rules define an *ex parte* communication as "an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given[.]"[14] Prohibited communications include written communications "if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding" as well as oral communications "unless advance notice thereof is given by the communicator to all parties in the proceeding and adequate opportunity afforded to them to be present."[15]

According to the NLRB rules, "[n]o interested person outside this agency shall . . . make or knowingly cause to be made any prohibited ex parte communication to Board agents . . . relevant to the merits of the proceeding."[16] Moreover, no agent of the Board shall request any prohibited *ex parte* communications or "make or knowingly cause to be made" any prohibited *ex parte* communications about the proceeding to any interested person outside the agency relevant to the merits of the proceeding."[17] The NLRB rules define "person outside this agency" to include "any individual outside this agency, partnership, corporation, association, or other entity, or an agent thereof, **and the general counsel or his representative when prosecuting an unfair labor practice proceeding before the Board pursuant to section 10(b) of the Act**."[18] Under the rules, an on-the-record proceeding subject to *ex parte* communications would include "an unfair labor practice proceeding pursuant to section 10(b) of the Act, communications to . . . members of the Board and their legal assistants, from the time the complaint and/or notice of hearing is issued, or the time the communicator has knowledge that a complaint or notice of hearing will be issued, whichever occurs first."[19] Thus, any communication by Acting General Counsel Lafe Solomon to then-NLRB Chair Wilma Liebman relevant to the Boeing case would appear to violate the statute. Likewise, communications by Board Chair Wilma Liebman to Lafe Solomon and third-parties would similarly constitute statutory violations.

Moreover, it would appear that the conduct of the NLRB does not meet any of the exceptions, whether under the APA, the ABA Rules of Judicial Conduct, or even the NLRB's own rules.[20]

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[11] 5 U.S.C. § 557(d)(1)(C).
[12] AMERICAN BAR ASS'N, MODEL CODE OF JUDICIAL CONDUCT CANON 3(B)(7) (1990).
[13] 29 C.F.R. § 102.126 (1998).
[14] 29 CFR § 102.127(b).
[15] 29 CFR § 102.129(a),(b).
[16] *Id.* at 102.126(a).
[17] *Id.* at 102.126(b).
[18] 29 CFR § 102.127(a) [emphasis added].
[19] 29 CFR § 102.128(e).
[20] *See Pioneer Hotel, Inc. v. NLRB*, 182 F.3d 939 (D.C. Cir. 1999).

II. Chair Wilma Liebman's Own Communications, in Addition to the Communications Between the NLRB and the International Association of Machinists' (IAM) lawyers as well as with Senator Harry Reid's office, reflect a pro-union bias.

On May 3, 2011, then-Chair Wilma Liebman forwarded an e-mail from the Labor and Employment Relations Association ("LERA") listserv hosted by the University of Illinois to NLRB Director of Public Affairs Nancy Cleeland and NLRB Acting General Counsel Lafe Solomon. The e-mail forwarded an unpublished draft editorial by Retired U.S. Office of Personnel Management employee George DeMarse, in which he stated:

> I am attaching a would-be editorial "states' rights" op-ed piece which the Washington Post declined to publish. I like it. It is "cutting," but so are scissors. Don't get me wrong—I love the Post. . . . However, their Board is highly anti-organized labor, particularly public sector labor. . . . In this piece I take issue with Kathleen Parker's Post column of April 24, in which she declares "war" on the NLRB who decided the recent Boeing case in favor of the union . . . The decision of the NLRB represents a "big picture" approach which is sorely needed, and my article says to the contrary that the decision is "gluten free" blood pudding for the progressives. My suspicions concerning the non-appearance of any criticism to the article by Ms Parker were confirmed when the Post came out with another anti-public sector union editorial today (May 3) in which it declares that the whole of collective bargaining and binding arbitration are "heavily tilted in favor of the unions."[21]

Although LERA (i) is hosted by the University of Illinois, a 501(c)(3) tax-exempt corporation, (ii) supports a listserv for which Wilma Liebman, an executive-branch employee, is a member, and (iii) seeks to use the listserv as a forum for partisan opinion as well as to influence official policy, LERA has not filed a Lobbying Disclosure Act ("LDA") registration with either the clerks of the U.S. Senate or House of Representatives nor has it registered as a lobbyist in the state of Illinois.[22]

It would also appear that the NLRB exercises bias in the way it processes labor complaints against employers under Section 8 of the National Labor Relations Act ("NLRA"). Printed on the March 26, 2010 charging document by the International Association of Machinists ("IAM") against Boeing are notes by the NLRB which clarify the charge as a category "3" and

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[21] E-mail, Labor and Employment Relations Association to LERA-L@Listserv.Illinois.edu (May 3, 2011 13:11 EST) [NLRB-FOIA-00000901-902].

[22] *See* QUERY THE LOBBYING DISCLOSURE ACT DATABASE, *available at* http://soprweb.senate.gov/index.cfm?event=submitSearchRequest (search "Labor and Employment Relations Association" in "client name" or "registrant name"). *See also* ELECTRONIC LOBBYIST SYSTEM, *available at* http://www.cyberdriveillinois.com/departments/index/lobbyist.html (search "Labor and Employment Relations Association" in "lobbyist name").

assign the case to hearing officer Dianne Todd "due to political/sensitive nature [and] local interest importance."[23]

As early as April 2, 2010, over a year before the NLRB used its Office of General Counsel to sue Boeing, Richard Ahearn communicated with and had meetings with David Campbell and other lawyers and staff of the International Association of Machinists ("IAM") concerning the IAM's lawsuit against Boeing:[24]

Microsoft Outlook

From:	David Campbell [campbell@workerlaw.com]
Sent:	Friday, April 02, 2010 1:25 PM
To:	Ahearn, Richard L.
Cc:	Corson Christopher; mblondin@iamaw.org; tomw@iam751.org; Carson Glickman-Flora; Kathy Barnard; Jude Bryan
Subject:	Boeing Unfair Labor Practice Charges

Director Ahearn, We propose to meet with you and your staff regarding the latest Boeing charges at 1:30 PM on April 12, 2010 at your offices. Please advise if this will work with your schedule.

Thanks, Dave

Sincerely, David Campbell
campbell@workerlaw.com
18 W Mercer Suite 400
Seattle, Washington 98119-3971
Phone (206)285-2828: FAX (206)378-4132
This communication is protected by the attorney client and attorney work-product privileges. Please do not copy, forward or append.

Further communications between the IAM and the NLRB affirm suspicions that the IAM influenced the NLRB Office of General Counsel's ultimate decision to sue Boeing as reflected by the following e-mail, just days before Lafe Solomon sued Boeing:[25]

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[23] United States of America, National Labor Relations Board, Charge Against Employer, at 2 [NLRB-FOIA-00000646].
[24] E-mail, David Campbell (IAM Counsel) to Richard Ahearn, (Apr. 2, 2010, 13:25 EST) [NLRB-FOIA-00000560].
[25] E-mail, Barry Kearney to Richard Ahearn (Apr. 1, 2011, 14:30 EST) [NLRB-FOIA-00000572].

Microsoft Outlook

From:	Kearney, Barry J.
Sent:	Friday, April 01, 2011 2:30 PM
To:	Ahearn, Richard L.
Subject:	FW: Why am I not surprized

From: Kearney, Barry J.
Sent: Friday, April 01, 2011 2:29 PM
To: Solomon, Lafe E.; Mattina, Celeste J.
Cc: Farrell, Ellen; Sophir, Jayme
Subject: Why am I not surprized

I just received a call from Dave Campbell and Chris Corsen. The call they have been waiting for all week came today at 1:15 to Corsen from a Boeing lawyer in Seattle named Brent Gerry. Corsen wasn't in and when he returned the call Gerry was unavailable until 5pm. After the 5pm call I will be in contact with them

Three months before the Office of General Counsel (OGC) sued Boeing, Lafe Solomon met with the IAM:[26]

Microsoft Outlook

Subject:	Machinists Union meet with GC re Boeing
Location:	GC Conference Room
Start:	Wed 1/19/2011 1:30 PM
End:	Wed 1/19/2011 3:00 PM
Recurrence:	(none)

III. The NLRB Lacks Regional Office Budget Information

Relevant budget data is vital to the NLRB's ability to analyze its effectiveness. The press, the public, and the government cannot adequately ascertain whether taxpayer money is being used efficiently if budgetary information is not made transparent. In response to the Cause of Action's FOIA request for regional office budgets, the NLRB stated that:

> As to item 2 [request for regional budgets], as we informed you in our September 19 phone call, in accordance with FOIA, inquiries were made to the Division of Administration's Budget Office and to the Division of

[26] Outlook Calendar Appointment, (Jan. 19, 2011) [NLRB-FOIA-00000657].

Operations –Management. Both of these Offices reported that there are no individual operating budgets for each of the regional offices.[27]

The fact that the NLRB does not perform regional budget analyses raises the concern that the NLRB is unable to account for differences in caseload or activity relative to its funding levels. In short, the NLRB lacks an effective tool for measuring how effectively it manages (or wastes) taxpayer dollars.

IV. The NLRB Obtained Google Advertisements to Encourage Union Organizing

Documents received by Cause of Action regarding the creation of an NLRB Google Adwords© account by an unnamed NLRB employee suggest that taxpayer dollars were used to create the account. According to the NLRB,[28] no taxpayer dollars were used, as Google provided the account and ads for free. This assertion by the NLRB raises a number of issues.

First, while the NLRB may never have submitted a payment to Google for the ads, it remains unclear whether the account was set up in the NLRB's official capacity by an NLRB employee and whether this was done during government time, on government computers, with government personnel involved. If NLRB personnel and computers were used to obtain the advertisements then the OIG should investigate why the ostensibly impartial NLRB chose to run such clearly pro-union ads using taxpayer-funded resources.

Second, according to Google's grants program eligibility requirements,[29] only 501(c)(3) organizations may obtain in-kind advertising donations from Google. As a government agency, the NLRB is, by definition, not a 501(c)(3) and so does not qualify for these donations. The question then remains whether the NLRB's assertion that they did not pay for the ads is correct, and if so, how it was they obtained the advertising for free.

V. Conclusion

The attached documents raise serious questions about the integrity of the NLRB and the process of bringing complaints. We respectfully ask that the Office of Inspector General launch a comprehensive investigation to insure that the NLRB is operating according to well-established conceptions of integrity and due process. Specifically we ask that:

1. OIG investigate to what extent impermissible ex parte communications occurred between former NLRB board member Wilma Liebman and NLRB General Counsel Lafe Solomon regarding the complaint filed against Boeing.

---

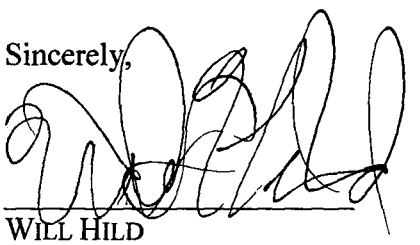
[27] Letter from Jacqueline Young, Freedom of Information Officer, to Freedom Through Justice Foundation (now Cause of Action) (October 7, 2001) (on file with recipient and author)
[28] FACT CHECK, *available at* http://www.nlrb.gov/news-media/fact-check/fact-check-archives
[29] LEGAL REQUIREMENT, *available at* http://www.google.com/grants/grantees/legal.html

2. OIG discern whether regional budgets exist for NLRB offices, and if not, conduct an audit and make a formal recommendation that regional budget information be calculated for future fiscal years.

3. OIG investigate what government resources, including computers, personnel, or funds were used to obtain improper Google Adwords© advertisements. Additionally, determine whether the Google Adwords ads created by the NLRB were in compliance with the NLRB's mission and the National Labor Relations Act ("NLRA").

Should you have any questions, comments, or concerns, please do not hesitate to contact Amber Taylor or Will Hild at Amber.Taylor@causeofaction.org, Will.Hild@causeofaction.org, or (202)-507-5880. Thank you for your attention to this matter.

Sincerely,



WILL HILD
Associate Attorney

Encl.: Exhibits

Matis, Jennifer A.

From: Susan Martin [susan.martin@causeofaction.org]
Sent: Tuesday, November 22, 2011 10:36 AM
To: Hotline, OIG
Subject: Request for Investigation
Attachments: 2011-11-22 NLRB-Request for Investigation-IG Berry.pdf

Please see the attached correspondence requesting an investigation.

Sincerely,

Susan Martin | Paralegal | Cause of Action
2100 M Street N.W., Ste #170-247
Washington, D.C. 20037-1233
Susan.Martin@causeofaction.org
202.507.5880
Click here to subscribe to our alerts!

CAUSE ACTION

Advocates for Government Accountability

A 501(c)(3) NONPROFIT CORPORATION

TELEPHONE: (202)-507-5880
WEB SITE: CAUSEOFACTION.ORG
2100 M STREET
SUITE 170-247
WASHINGTON, D.C. 20037

November 22, 2011

VIA E-MAIL AND FIRST CLASS MAIL

David P. Berry
Inspector General
National Labor Relations Board
1099 14th Street, NW Room 9820
Washington, DC 20570
E-mail: OIGHOTLINE@nlrb.gov

RE: REQUEST FOR INVESTIGATION

Dear Inspector General Berry:

We write on behalf of Cause of Action, an independent 501(c)(3) public interest organization that uses public advocacy and legal reform strategies to ensure greater transparency in government, protect taxpayer interests and promote economic freedom.

On August 30, 2011, Cause of Action sent a Freedom of Information Act ("FOIA") to the National Labor Relations Board ("NLRB") requesting communications and records concerning the NLRB's decision to sue Boeing. On September 12, 2011, Cause of Action sent a FOIA request to the NLRB requesting the daily calendars of Board members, documents concerning the operating budgets of NLRB regional offices, and certain advertising documents. On the basis of the documents received and reviewed by Cause of Action, we have serious concerns about (i) *ex parte* communications, (ii) pro-union bias, and (iii) a fundamental lack of internal accountability and oversight at the National Labor Relations Board.

I. Former Member and Chairman Wilma Liebman and Acting General Counsel Lafe Solomon Engaged in Improper *Ex Parte* Communications.

An e-mail dated January 7, 2011 reflects that just a few months before General Counsel Lafe Solomon filed suit against Boeing, there was a taxpayer-funded meeting between Seattle NLRB region-19 regional director Richard Ahearn, General Counsel Lafe Solomon, and the International Association of Machinists lawyers:[1]

From: Baniszewski, Joseph
Sent: Friday, January 07, 2011 1:01 PM
To: Siegel, Richard A.
Cc: Roberts, Crystal; Ahearn, Richard L.; Snook, Dennis
Subject: Travel Order for Region 19 RD Rich Ahearn

Crystal,

Please prepare a travel order for Region 19 RD Rich Ahearn to travel to Washington January 18, 19 and 20, to meet with the General Counsel, Advice and lawyers representing the Machinists' Union in Boeing Corp., 19-CA-32431.

Rick,

Please note your approval and forward this E Mail to Crystal.

Thanks,

Joe

Within the same month that Richard Ahearn was meeting with the General Counsel, Department of Advice, and the IAM's lawyers, Richard Ahearn sent an e-mail to Solomon and Kearney, among others, citing an anti-Boeing article in the *Seattle Times*.[2]

---

[1] E-mail. Joseph Baniszewski to Richard A. Siegel, Crystal Roberts, Richard L. Ahearn and Dennis Snook (Jan. 7, 2011, 13:01 EST) [NLRB-FOIA-00000570].
[2] E-mail, Richard Ahearn to Lafe Solomon *et al.*, (Jan. 27, 2011, 10:52 EST) [NLRB-FOIA-00000822].

Microsoft Outlook

From:	Ahearn, Richard L.
Sent:	Thursday, January 27, 2011 10:52 AM
To:	Solomon, Lafe E.; Mattina, Celeste J.; Kearney, Barry J.; Farrell, Ellen; Willen, Debra L; Katz, Judy; Omberg, Bob
Subject:	Boeing's next delivery: bonuses

Boeing's next delivery: bonuses

Despite lower revenue in 2010 than a year earlier and higher-than-expected spending on the 787 and 747-8 programs, Boeing booked $4.5 billion in pretax profits. As a result, about 18,500 Washington state employees will qualify for bonuses worth almost three weeks' extra pay.

http://seattletimes.nwsource.com/html/businesstechnology/2014048927_boeing27.html

Normally, these communications would not be problematic under the law; but where evidence has shown Lafe Solomon to have discussed the Boeing matter with Chair Wilma Liebman, the above communications may reflect a knowing intent to influence the Board's decision-making. Indeed, these e-mails reflect post-Boeing lawsuit communications between Public Affairs Director Nancy Cleeland and Richard Ahearn,[3] between Nancy Cleeland and Lafe Solomon and Chair Wilma Liebman,[4] between Richard Ahearn and Lafe Solomon, Nancy Cleeland, and Barry Kearney,[5] from New Media specialist Anthony Wagner to Wilma Liebman, Lafe Solomon, and Nancy Cleeland regarding Boeing,[6] from Nancy Cleeland to Richard Ahearn and Barry Kearney,[7] and from Adam Naill of the Senate Health, Education, Labor and Pensions (HELP) Committee to Jose Garza of NLRB Public Affairs, who forwarded Senator Harry Reid's statements in support of the NLRB's decision to sue Boeing to Lafe Solomon and Wilma Liebman:

> Mr. Reid: Madam President, I Recognize That we're in a partisan environment . . . Founders created a system of checks and balances. . . . Long after that system was created [a] new independent federal agency was created in the same spirit of checks an[d] balances. That agency is the National Labor Relations Board. It acts as a check on employers an[d]

---

[3] E-mail, Nancy Cleeland to Richard Ahearn (Apr. 21, 2011 14:29 EST) [NLRB-FOIA-00000573].
[4] E-mail, Nancy Cleeland to Lafe Solomon, Wilma Liebman, Jose Garza, & John Ferguson (Apr. 28, 2011 15:14 EST) [NLRB-FOIA-00000763]; E-mail, Nancy Cleeland to Lafe Solomon, Wilma Liebman, Jose Garza, & John Ferguson (Apr. 28, 2011 15:20 EST) [NLRB-FOIA-00000658-659].
[5] *See* E-mail, Nancy Cleeland to Richard Ahearn (May 3, 2011, 14:27 EST) [NLRB-FOIA-00000588].
[6] E-mail, Anthony Wagner to Wilma Liebman, Lafe Solomon, Nancy Cleeland, *et al.* (May 3, 2011, 16:38 EST) [NLRB-FOIA-00001063].
[7] E-mail, Nancy Cleeland to Barry Kearney & Richard Ahearn, May 4, 2011, 11:25 EST) [NLRB-FOIA-00000593].

> employees alike. It safeguards employees' rights to unionize or not unionize. It mediates allegations of unfair labor. . . . The acting general counsel is a man who is as nonpartisan and independent . . . . Last week they issued a complaint against Boeing. . . . Our Republican colleagues have attacked the NLRB and tried to poison the decision process. For example, every Republican Senator on the "HELP" Committee, and, Madam President, let's remind everyone the L in HELP stands for labor, they sent a letter to the acting general counsel defending Boeing. The [fact that the] letter itself was sent six weeks before a hearing [took] place seems questionable at the very best. But these 10 Republicans went further. They went out of their way to link their request to the acting General Counsel's pending nomination. If there [was] ever a case of intimidation, that sounds like it to me.[8]

An additional e-mail from Richard Ahearn to NLRB Executive Secretary Les Heltzer forwarded a press release from the Democratic Policy and Communications Center, which quoted Senator Reid's above remarks:[9]

---

[8] E-mail from Jose Garza to Lafe Solomon, Wilma Liebman, Nancy Cleeland *et al.* (forwarding e-mail from Adam Naill (Senate HELP) to Jose Garza), (May 11, 2011, 9:45 EST) [NLRB-FOIA-00000777-778].

[9] E-mail from Richard Ahearn to Les Heltzer (May 11, 2011 14:54 EST) [NLRB-FOIA-00000640-642].

Microsoft Outlook

From:	Ahearn, Richard L.
Sent:	Wednesday, May 11, 2011 2:54 PM
To:	HELTZER, LES (Hdqs)
Subject:	Sen REID - MUST KEEP INDEPENDENT AGENCIES INDEPENDENT - OPERATE FREELY AND WITHOUT POLITICAL PRESSURE
Attachments:	image001.jpg

http://democrats.senate.gov/newsroom/record.cfm?id=332789&

DEMOCRATIC POLICY AND CON

(202) 2

For Immediate Release
Date: Wednesday, May 11, 2011

CONTACT: Jon Summers, (202) 224-2939

REID: WE MUST KEEP INDEPENDENT AGENCIES INDEPENDENT, ALLOW THEM TO OPERATE FREELY AND WITHOUT POLITICAL PRESSURE

An e-mail from IAM's attorney David Campbell to Richard Ahearn earlier that day revealed that Ahearn merely forwarded to others at the NLRB the press release he received from David Campbell:[10]

[10] E-mail, David Campbell to Richard Ahearn (May 11, 2011, 11:18 PST) [NLRB-FOIA-00000672].

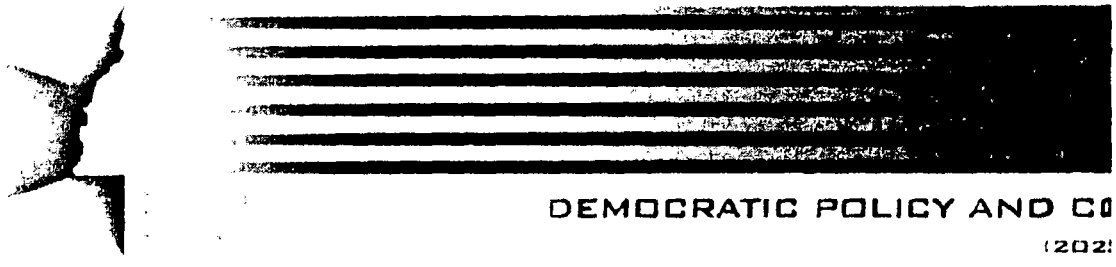
Microsoft Outlook

From:	David Campbell [campbell@workerlaw.com]
Sent:	Wednesday, May 11, 2011 11:18 AM
To:	Aheam, Richard L.
Subject:	FW: Sen REID - MUST KEEP INDEPENDENT AGENCIES INDEPENDENT - OPERATE FREELY AND WITHOUT POLITICAL PRESSURE
Attachments:	image001 jpg

Thanks, Dave

Sincerely, David Campbell
campbell@workerlaw.com
Schwerin Campbell Barnard Iglitzin & Lavitt
18 W Mercer Suite 400
Seattle, Washington 98119-3971
Phone (206)285-2828: FAX (206)378-4132
This communication is protected by the attorney client and attorney work-product privileges. Please do not copy, forwa or append.

http://democrats.senate.gov/newsroom/record.cfm?id=332789&



For Immediate Release
Date: Wednesday, May 11, 2011

CONTACT: Jon Summers, (202) 224-2939

REID: WE MUST KEEP INDEPENDENT AGENCIES INDEPENDENT, ALLOW THEM TO OPERATE FREELY AND WITHOUT POLITICAL PRESSURE

Under the Administrative Procedures Act ("APA"), a member of the NLRB must not make a prohibited communication with interested persons outside the agency.[11] The American Bar Association's Model Code of Judicial Conduct bars *ex parte* communications except those limited to "consultation with court personnel . . . or with other judges."[12] The NLRB's own *ex parte* rules prohibit communications with outside, interested persons.[13] The rules define an *ex parte* communication as "an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given[.]"[14] Prohibited communications include written communications "if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding" as well as oral communications "unless advance notice thereof is given by the communicator to all parties in the proceeding and adequate opportunity afforded to them to be present."[15]

According to the NLRB rules, "[n]o interested person outside this agency shall . . . make or knowingly cause to be made any prohibited ex parte communication to Board agents . . . relevant to the merits of the proceeding."[16] Moreover, no agent of the Board shall request any prohibited *ex parte* communications or "make or knowingly cause to be made" any prohibited *ex parte* communications about the proceeding to any interested person outside the agency relevant to the merits of the proceeding."[17] The NLRB rules define "person outside this agency" to include "any individual outside this agency, partnership, corporation, association, or other entity, or an agent thereof, **and the general counsel or his representative when prosecuting an unfair labor practice proceeding before the Board pursuant to section 10(b) of the Act**."[18] Under the rules, an on-the-record proceeding subject to *ex parte* communications would include "an unfair labor practice proceeding pursuant to section 10(b) of the Act, communications to . . . members of the Board and their legal assistants, from the time the complaint and/or notice of hearing is issued, or the time the communicator has knowledge that a complaint or notice of hearing will be issued, whichever occurs first."[19] Thus, any communication by Acting General Counsel Lafe Solomon to then-NLRB Chair Wilma Liebman relevant to the Boeing case would appear to violate the statute. Likewise, communications by Board Chair Wilma Liebman to Lafe Solomon and third-parties would similarly constitute statutory violations.

Moreover, it would appear that the conduct of the NLRB does not meet any of the exceptions, whether under the APA, the ABA Rules of Judicial Conduct, or even the NLRB's own rules.[20]

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[11] 5 U.S.C. § 557(d)(1)(C).
[12] AMERICAN BAR ASS'N. MODEL CODE OF JUDICIAL CONDUCT CANON 3(B)(7) (1990).
[13] 29 C.F.R. § 102.126 (1998).
[14] 29 CFR § 102.127(b).
[15] 29 CFR § 102.129(a),(b).
[16] *Id.* at 102.126(a).
[17] *Id.* at 102.126(b).
[18] 29 CFR § 102.127(a) [emphasis added].
[19] 29 CFR § 102.128(e).
[20] *See Pioneer Hotel, Inc. v. NLRB*, 182 F.3d 939 (D.C. Cir. 1999).

II. Chair Wilma Liebman's Own Communications, in Addition to the Communications Between the NLRB and the International Association of Machinists' (IAM) lawyers as well as with Senator Harry Reid's office, reflect a pro-union bias.

On May 3, 2011, then-Chair Wilma Liebman forwarded an e-mail from the Labor and Employment Relations Association ("LERA") listserv hosted by the University of Illinois to NLRB Director of Public Affairs Nancy Cleeland and NLRB Acting General Counsel Lafe Solomon. The e-mail forwarded an unpublished draft editorial by Retired U.S. Office of Personnel Management employee George DeMarse, in which he stated:

> I am attaching a would-be editorial "states' rights" op-ed piece which the Washington Post declined to publish. I like it. It is "cutting," but so are scissors. Don't get me wrong—I love the Post. . . . However, their Board is highly anti-organized labor, particularly public sector labor. . . . In this piece I take issue with Kathleen Parker's Post column of April 24, in which she declares "war" on the NLRB who decided the recent Boeing case in favor of the union . . . The decision of the NLRB represents a "big picture" approach which is sorely needed, and my article says to the contrary that the decision is "gluten free" blood pudding for the progressives. My suspicions concerning the non-appearance of any criticism to the article by Ms Parker were confirmed when the Post came out with another anti-public sector union editorial today (May 3) in which it declares that the whole of collective bargaining and binding arbitration are "heavily tilted in favor of the unions."[21]

Although LERA (i) is hosted by the University of Illinois, a 501(c)(3) tax-exempt corporation, (ii) supports a listserv for which Wilma Liebman, an executive-branch employee, is a member, and (iii) seeks to use the listserv as a forum for partisan opinion as well as to influence official policy, LERA has not filed a Lobbying Disclosure Act ("LDA") registration with either the clerks of the U.S. Senate or House of Representatives nor has it registered as a lobbyist in the state of Illinois.[22]

It would also appear that the NLRB exercises bias in the way it processes labor complaints against employers under Section 8 of the National Labor Relations Act ("NLRA"). Printed on the March 26, 2010 charging document by the International Association of Machinists ("IAM") against Boeing are notes by the NLRB which clarify the charge as a category "3" and

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[21] E-mail, Labor and Employment Relations Association to LERA-L@Listserv.Illinois.edu (May 3, 2011 13:11 EST) [NLRB-FOIA-00000901-902].

[22] *See* QUERY THE LOBBYING DISCLOSURE ACT DATABASE, *available at* http://soprweb.senate.gov/index.cfm?event=submitSearchRequest (search "Labor and Employment Relations Association" in "client name" or "registrant name"). *See also* ELECTRONIC LOBBYIST SYSTEM, *available at* http://www.cyberdriveillinois.com/departments/index/lobbyist.html (search "Labor and Employment Relations Association" in "lobbyist name").

assign the case to hearing officer Dianne Todd "due to political/sensitive nature [and] local interest importance."[23]

As early as April 2, 2010, over a year before the NLRB used its Office of General Counsel to sue Boeing, Richard Ahearn communicated with and had meetings with David Campbell and other lawyers and staff of the International Association of Machinists ("IAM") concerning the IAM's lawsuit against Boeing:[24]

Microsoft Outlook

From:	David Campbell [campbell@workerlaw.com]
Sent:	Friday, April 02, 2010 1:25 PM
To:	Ahearn, Richard L.
Cc:	Corson Christopher; mblondin@iamaw.org; tomw@iam751.org; Carson Glickman-Flora; Kathy Barnard; Jude Bryan
Subject:	Boeing Unfair Labor Practice Charges

Director Ahearn, We propose to meet with you and your staff regarding the latest Boeing charges at 1:30 PM on April 12, 2010 at your offices. Please advise if this will work with your schedule.

Thanks, Dave

Sincerely, David Campbell
campbell@workerlaw.com
18 W Mercer Suite 400
Seattle, Washington 98119-3971
Phone (206)285-2828; FAX (206)378-4132
This communication is protected by the attorney client and attorney work-product privileges. Please do not copy, forward or append.

Further communications between the IAM and the NLRB affirm suspicions that the IAM influenced the NLRB Office of General Counsel's ultimate decision to sue Boeing as reflected by the following e-mail, just days before Lafe Solomon sued Boeing:[25]

---

[23] United States of America, National Labor Relations Board, Charge Against Employer, at 2 [NLRB-FOIA-00000646].
[24] E-mail, David Campbell (IAM Counsel) to Richard Ahearn, (Apr. 2, 2010, 13:25 EST) [NLRB-FOIA-00000560].
[25] E-mail, Barry Kearney to Richard Ahearn (Apr. 1, 2011, 14:30 EST) [NLRB-FOIA-00000572].

Microsoft Outlook

From:	Kearney, Barry J.
Sent:	Friday, April 01, 2011 2:30 PM
To:	Ahearn, Richard L.
Subject:	FW: Why am I not surprized

From: Kearney, Barry J.
Sent: Friday, April 01, 2011 2:29 PM
To: Solomon, Lafe E.; Mattina, Celeste J.
Cc: Farrell, Ellen; Sophir, Jayme
Subject: Why am I not surprized

I just received a call from Dave Campbell and Chris Corsen. The call they have been waiting for all week came today at 1:15 to Corsen from a Boeing lawyer in Seattle named Brent Gerry. Corsen wasn't in and when he returned the call Gerry was unavailable until 5pm. After the 5pm call I will be in contact with them

Three months before the Office of General Counsel (OGC) sued Boeing, Lafe Solomon met with the IAM:[26]

Microsoft Outlook

Subject:	Machinists Union meet with GC re Boeing
Location:	GC Conference Room
Start:	Wed 1/19/2011 1:30 PM
End:	Wed 1/19/2011 3:00 PM
Recurrence:	(none)

III. The NLRB Lacks Regional Office Budget Information

Relevant budget data is vital to the NLRB's ability to analyze its effectiveness. The press, the public, and the government cannot adequately ascertain whether taxpayer money is being used efficiently if budgetary information is not made transparent. In response to the Cause of Action's FOIA request for regional office budgets, the NLRB stated that:

> As to item 2 [request for regional budgets], as we informed you in our September 19 phone call, in accordance with FOIA, inquiries were made to the Division of Administration's Budget Office and to the Division of

[26] Outlook Calendar Appointment, (Jan. 19, 2011) [NLRB-FOIA-00000657].

Operations –Management. Both of these Offices reported that there are no individual operating budgets for each of the regional offices.[27]

The fact that the NLRB does not perform regional budget analyses raises the concern that the NLRB is unable to account for differences in caseload or activity relative to its funding levels. In short, the NLRB lacks an effective tool for measuring how effectively it manages (or wastes) taxpayer dollars.

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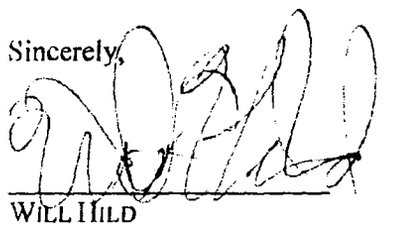
[28] FACT CHECK, *available at* http://www.nlrb.gov/news-media/fact-check/fact-check-archives
[29] LEGAL REQUIREMENT, *available at* http://www.google.com/grants/grantees/legal.html

2. OIG discern whether regional budgets exist for NLRB offices, and if not, conduct an audit and make a formal recommendation that regional budget information be calculated for future fiscal years.

3. OIG investigate what government resources, including computers, personnel, or funds were used to obtain improper Google Adwords© advertisements. Additionally, determine whether the Google Adwords ads created by the NLRB were in compliance with the NLRB's mission and the National Labor Relations Act ("NLRA").

Should you have any questions, comments, or concerns, please do not hesitate to contact Amber Taylor or Will Hild at Amber.Taylor@causeofaction.org, Will.Hild@causeofaction.org, or (202)-507-5880. Thank you for your attention to this matter.

Sincerely,



WILL HILD
Associate Attorney

Encl.: Exhibits

Matis, Jennifer A.

From: Will Hild [will.hild@causeofaction.org]
Sent: Tuesday, December 06, 2011 1:42 PM
To: Matis, Jennifer A.
Subject: RE: FOIA Docs with Exemption 5

We are likely going to appeal, however first we must file a second FOIA for just the documents I sent to you. According to Ms. Young our appeal rights do not vest until the production is complete.

From: Matis, Jennifer A. [mailto:Jennifer.Matis@nlrb.gov]
Sent: Tuesday, December 06, 2011 12:40 PM
To: Will Hild
Subject: RE: FOIA Docs with Exemption 5

Thank you very much for bringing this to my attention. I am going to look into it. Additionally, don't forget that you have the right to appeal the FOIA response if you are not satisfied with it.

From: Will Hild [mailto:will.hild@causeofaction.org]
Sent: Tuesday, December 06, 2011 11:06 AM
To: Matis, Jennifer A.
Subject: FOIA Docs with Exemption 5

Hi Jennifer,

Thanks for speaking with me yesterday. I apologize it took me so long to get back to you.

Attached should be a number of FOIA docs that were part of the NLRB's 4th production to our request. As you will see they record conversations between a number of NLRB staff including Nancy Cleeland, Lafe Solomon, and most importantly, Wilma Liebman. The subject line is "CNN questions on correction" and Jacquelyn Young in the FOIA office confirmed to me that the conversation regards the NLRB's press strategy regarding the Boeing case.

My question is how do they think that exemption 5 applies? Ms. Young told me their position is that this is an intra-agency deliberation, however that assumes that Liebman and Solomon are permitted to deliberate on anything related to the Boeing case in total violation of the wall of separation that presumably exists between Solomon and the board on matters still being adjudicated. The NLRB's position seems to be that on matters of press, post-complaint, Liebman is allowed to deliberate with Solomon et al. on how to handle press issues. I wholeheartedly disagree with this claim and am currently looking into the legal issues involved. Any thoughts you have would be welcome.

Thanks,
Will Hild

Will Hild | Associate Attorney, Acting Communications Director | Cause of Action
2100 M Street N.W., Ste #170-247
Washington, D.C. 20037-1233
Will.Hild@CauseofAction.org
O: 202.507.5885 | C: 941.302.8593
Click here to subscribe to our alerts!

Matis, Jennifer A.

From: Matis, Jennifer A.
Sent: Tuesday, December 06, 2011 12:40 PM
To: 'Will Hild'
Subject: RE: FOIA Docs with Exemption 5

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Thanks,
Will Hild

Will Hild | Associate Attorney, Acting Communications Director | Cause of Action
2100 M Street N.W., Ste #170-247
Washington, D.C. 20037-1233
Will.Hild@CauseofAction.org
O: 202.507.5885 | C: 941.302.8593
Click here to subscribe to our alerts!

Matis, Jennifer A.

From: Will Hild [will.hild@causeofaction.org]

Sent: Tuesday, December 06, 2011 11:06 AM

To: Matis, Jennifer A.

Subject: FOIA Docs with Exemption 5

Attachments: NLRB-FOIA-00003690.pdf; NLRB-FOIA-00002849.pdf; NLRB-FOIA-00002852.pdf; NLRB-FOIA-00002855.pdf; NLRB-FOIA-00002858.pdf; NLRB-FOIA-00002861.pdf; NLRB-FOIA-00002865.pdf; NLRB-FOIA-00002870.pdf; NLRB-FOIA-00002875.pdf; NLRB-FOIA-00002880.pdf; NLRB-FOIA-00002885.pdf; NLRB-FOIA-00002890.pdf; NLRB-FOIA-00002895.pdf; NLRB-FOIA-00002904.pdf; NLRB-FOIA-00002908.pdf; NLRB-FOIA-00002926.pdf; NLRB-FOIA-00002929.pdf; NLRB-FOIA-00002932.pdf; NLRB-FOIA-00002935.pdf; NLRB-FOIA-00002942.pdf; NLRB-FOIA-00003139.pdf; NLRB-FOIA-00003140.pdf; NLRB-FOIA-00003143.pdf; NLRB-FOIA-00003670.pdf; NLRB-FOIA-00003673.pdf; NLRB-FOIA-00003676.pdf; NLRB-FOIA-00003681.pdf; NLRB-FOIA-00003686.pdf

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To: Cleeland, Nancy; Solomon, Lafe E.; Garza, Jose; Kearney, Barry J.; Farrell, Ellen; Sophir, Jayme
Subject: RE: CNN questions on correction

Exemption 5

Rich

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To: Ahearn, Richard L.; Solomon, Lafe E.; Garza, Jose; Kearney, Barry J.; Farrell, Ellen; Sophir, Jayme
Subject: RE: CNN questions on correction

Exemption 5

Nancy Cleeland
NLRB Director of Public Affairs
(202) 273-0222
nancy.cleeland@nlrb.gov

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Subject: FW: CNN questions on correction

Exemption 5

[redacted]

Exemption 5

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To: Farrell, Ellen; Solomon, Lafe E.; Cleeland, Nancy; Liebman, Wilma B.; Garza, Jose; Ahearn, Richard L.; Kearney, Barry J.
Subject: RE: CNN questions on correction

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To: Cleeland, Nancy; Solomon, Lafe E.; Garza, Jose; Kearney, Barry J.; Farrell, Ellen; Sophir, Jayme
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Exemption 5

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Exemption 5

Ellen

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Division of Advice, NLRB
202-273-3810
Ellen.Farrell@nlrb.gov

From: Solomon, Lafe E.
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Exemption 5

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Sent: Friday, April 29, 2011 1:31 PM

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NLRB Director of Public Affairs

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Sent: Wednesday, April 27, 2011 3:26 PM
To: Cleeland, Nancy
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NLRB-FOIA-00002889

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Sent: Friday, April 29, 2011 3:49 PM
To: Solomon, Lafe E.; Cleeland, Nancy; Liebman, Wilma B.; Garza, Jose; Ahearn, Richard L.; Kearney, Barry J.; Sophir, Jayme
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[redacted]

Exemption 5

Ellen

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Microsoft Outlook

From: Kearney, Barry J.
Sent: Saturday, April 30, 2011 12:56 AM
To: Farrell, Ellen
Subject: Fw: CNN questions on correction

Sent from my BlackBerry Wireless Handheld

From: Kearney, Barry J.
To: Ferguson, John H.
Sent: Sat Apr 30 00:55:07 2011
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[redacted]

Exemption 5

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To: Farrell, Ellen; Solomon, Lafe E.; Cleeland, Nancy; Garza, Jose; Ahearn, Richard L.; Kearney, Barry J.; Sophir, Jayme
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[redacted]

Exemption 5

NLRB-FOIA-00002904

[redacted]

Exemption 5

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Subject: Re: Senator Graham's statements

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Tom

On 4/27/11 3:52 PM, "Cleeland, Nancy" <Nancy.Cleeland@nlrb.gov> wrote:

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Nancy Cleeland

NLRB Director of Public Affairs

(202) 273-0222

nancy.cleeland@nlrb.gov

From: Tom Bettag [mailto:Tom.Bettag@turner.com]
Sent: Wednesday, April 27, 2011 3:26 PM
To: Cleeland, Nancy
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Tom Bettag

NLRB-FOIA-00002907

Microsoft Outlook

From: Farrell, Ellen
Sent: Tuesday, May 03, 2011 3:51 PM
To: Kearney, Barry J.; Sophir, Jayme; Szapiro, Miriam; Willen, Debra L
Subject: RE: question for daily story
Attachments: image001.jpg

Exemption 5 & 7(A)

Ellen

Ellen Farrell
Deputy Associate General Counsel
Division of Advice, NLRB
202-273-3810
Ellen.Farrell@nlrb.gov

From: Kearney, Barry J.
Sent: Tuesday, May 03, 2011 3:39 PM
To: Farrell, Ellen; Sophir, Jayme; Szapiro, Miriam; Willen, Debra L
Subject: FW: question for daily story

From: Ahearn, Richard L.
Sent: Tuesday, May 03, 2011 3:23 PM
To: Kearney, Barry J.
Subject: FW: question for daily story

From: Cleeland, Nancy
Sent: Tuesday, May 03, 2011 12:18 PM
To: Ahearn, Richard L.
Subject: FW: question for daily story

From a Congressional Quarterly reporter, in case this sheds any light on the amendment

---

From: Lauren Smith [LaurenSmith@cqrollcall.com]
Sent: Tuesday, May 03, 2011 3:12 PM
To: Cleeland, Nancy
Subject: RE: question for daily story

Here is a copy of the amendment:

They say it: "Strengthen the existing protection in the National Labor relations Act of state right-to-work law to ensure that state laws cannot be pre-empted by union contracts or the NLRB. It provides necessary clarity to prevent the NLRB from moving forward in their case against Boeing or attempting a similar strategy against other companies. It updates the current law with the following:

Nothing in the Act shall be construed to limit the application of any State law that prohibits, or otherwise places restraints upon, agreements between labor organizations and employers, or that require the payment of dues or fees to such organizations, a condition of employment either before or after hiring."

From: Cleeland, Nancy [mailto:Nancy.Cleeland@nlrb.gov]
Sent: Tuesday, May 03, 2011 3:05 PM
To: Lauren Smith
Subject: RE: question for daily story

Hi Lauren,

I realize I was mistaken. I'd gotten the idea that this was a national right to work bill from another reporter; it turns out that's not what this is. We're trying to figure out exactly what it would do.

From: Lauren Smith [LaurenSmith@cqrollcall.com]
Sent: Tuesday, May 03, 2011 3:03 PM
To: Cleeland, Nancy
Subject: question for daily story

Hey Nancy -- Thanks for helping me out with this. I really appreciate it!

For the daily story about Sens. Alexander and Graham's right-to-work legislation, I'd love to get a comment on the ramifications of the language, both for labor and for the NLRB. Something similar to what we talked about over the phone: That this is an attempt to mandate all states adopt right-to-work policies. That this legislation is really nothing new and has been introduced by the GOP many times before.

To give you a better sense of what I'm looking into for my feature story: I'm writing about the natural oscillation of the board and it's pro-union vs. pro-business decisions depending on which party is controlling the White House. My argument is that the Boeing case provides ammunition to those that are trying to prove the NLRB has an activist agenda, but in reality, the NLRB under Obama is no more pro-union than it was pro-business under the previous Bush administration. The NLRB is also under much greater scrutiny on the whole due to the larger labor environment. I would love to get a comment about the natural progression of the board becoming politicized, and how it's historically seesawed between pro-union and pro-business decisions based on the administration.

Thanks so much and please let me know if you have any questions! I'm on my cell today: 617-633-0425

Best,
Lauren

Lauren Smith
Staff Writer
lsmith@cq.com
(o): 202-650-6604 **please note new number!
(m): 617-633-0425

Congressional Quarterly
77 K St., NE
Washington, DC 20002

CQ
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NLRB-FOIA-00002909

This e-mail may contain confidential material. If you are not an intended recipient, please notify the sender and delete all copies. It may also contain personal views which are not the views of CQ Roll Call or its owner, The Economist Group. We may monitor e-mail to and from our network. For company information go to http://legal.economistgroup.com.

Microsoft Outlook

From: Garza, Jose
Sent: Friday, April 29, 2011 3:28 PM
To: Cleeland, Nancy; Solomon, Lafe E.; Liebman, Wilma B.; Ahearn, Richard L.
Subject: RE: CNN questions on correction

[redacted]

Exemption 5

Jose P. Garza
Special Counsel for
Congressional and Intergovernmental Affairs
National Labor Relations Board
202-273-0013

From: Cleeland, Nancy
Sent: Friday, April 29, 2011 3:16 PM
To: Solomon, Lafe E.; Liebman, Wilma B.; Garza, Jose; Ahearn, Richard L.
Subject: CNN questions on correction

[redacted]

Exemption 5

Thanks

Nancy Cleeland
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NLRB-FOIA-00002934

Microsoft Outlook

From: Liebman, Wilma B.
Sent: Friday, April 29, 2011 3:26 PM
To: Cleeland, Nancy; Solomon, Lafe E.; Garza, Jose; Ahearn, Richard L.
Subject: RE: CNN questions on correction

[redacted]

Exemption 5

From: Cleeland, Nancy
Sent: Friday, April 29, 2011 3:16 PM
To: Solomon, Lafe E.; Liebman, Wilma B.; Garza, Jose; Ahearn, Richard L.
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[redacted]

Exemption 5

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NLRB-FOIA-00002931

Microsoft Outlook

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Sent: Friday, April 29, 2011 3:16 PM
To: Solomon, Lafe E.; Liebman, Wilma B.; Garza, Jose; Ahearn, Richard L.
Subject: CNN questions on correction

[redacted]

Exemption 5

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NLRB-FOIA-00002928

Microsoft Outlook

From: Solomon, Lafe E.
Sent: Friday, April 29, 2011 3:20 PM
To: Kearney, Barry J.; Farrell, Ellen; Sophir, Jayme
Subject: FW: CNN questions on correction

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Exemption 5

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Tom Bettag

Microsoft Outlook

From: Cleeland, Nancy
Sent: Friday, April 29, 2011 3:44 PM
To: Garza, Jose; Solomon, Lafe E.; Liebman, Wilma B.; Ahearn, Richard L.
Subject: RE: CNN questions on correction

Thanks all,

[redacted]

Exemption 5

Nancy Cleeland
NLRB Director of Public Affairs
(202) 273-0222
nancy.cleeland@nlrb.gov

From: Garza, Jose
Sent: Friday, April 29, 2011 3:28 PM
To: Cleeland, Nancy; Solomon, Lafe E.; Liebman, Wilma B.; Ahearn, Richard L.
Subject: RE: CNN questions on correction

[redacted]

Exemption 5

Jose P. Garza
Special Counsel for
Congressional and Intergovernmental Affairs
National Labor Relations Board

202-273-0013

From: Cleeland, Nancy
Sent: Friday, April 29, 2011 3:16 PM
To: Solomon, Lafe E.; Liebman, Wilma B.; Garza, Jose; Ahearn, Richard L.
Subject: CNN questions on correction

[redacted]

Exemption 5

Thanks

Nancy Cleeland
NLRB Director of Public Affairs
(202) 273-0222
nancy.cleeland@nlrb.gov

From: Tom Bettag [mailto:Tom.Bettag@turner.com]
Sent: Friday, April 29, 2011 1:31 PM
To: Cleeland, Nancy
Subject: Re: Senator Graham's statements

Dear Nancy,
Let me come back to you at the end of the week with where we are. We'll do something on Sunday, but it will be very short.

It seems there are two significant points, and correct me if you think there are more:
1) You say in your fact check that news organizations erroneously report that Boeing is being ordered to close its plant when it is only being challenged on its production of Dreamliners. That should be duly noted, but Boeing and Sen. Graham (among others) contend that the purpose of the plant was to specifically produce Dreamliners. I understand your point, but isn't it fair to say that both things can be true?

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I can see that this has become broad enough that this will quickly get to be a headache for you. We're going to try to get past it. And FYI the White House declines comment.

Tom

On 4/27/11 3:52 PM, "Cleeland, Nancy" <Nancy.Cleeland@nlrb.gov> wrote:

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Several news outlets have erroneously reported in recent days that the National Labor Relations Board has ordered the Boeing Company to close its operations in South Carolina. In fact, the complaint issued on April 20 by the Acting General Counsel <http://www.nlrb.gov/news/national-labor-relations-board-issues-complaint-against-boeing-company-unlawfully-transferring-> does not seek to have the South Carolina facility closed. It seeks to halt the transfer of a specific piece of production work due to allegations that the transfer was unlawfully motivated. The complaint explicitly states that Boeing may place work where it likes, including at its South Carolina facility, as long as the decision is not made for discriminatory reasons.

In addition, the Board has not yet considered or ruled on the allegations in the complaint. Under the NLRB's statute, the General Counsel and the Board are separate and independent, with the General Counsel functioning as prosecutor and the Board functioning as a court. The case is scheduled to be tried before an administrative law judge, acting under the Board's authority. That decision could then be appealed to the Board itself for its decision.

These may seem to be fine points, but in fact they are very significant. When the show's title said "NLRB rules against Boeing', it fed into the idea that this was a political decision made by a political body. In fact, the Acting General Counsel – who is a career NLRB attorney recently named to the job - merely issued a complaint, which is the first step in the process. He alleged that Boeing broke the law, but now the case must be heard by an NLRB judge and perhaps ultimately the Board.

Also, both Candy Crowley and Sen. Graham repeatedly said that the NLRB told Boeing they had to close the South Carolina plant. That is absolutely not true. There is a finite amount of work in question – basically 3 planes a month. Boeing has tremendous backlogs and could locate more work in SC.

I'd be happy to discuss this further. For better or worse, we've been in the news a fair amount lately, and probably will continue to be. I'm a long time journalist myself – just left the LATimes three years ago after a decade as their labor writer, and have been here at the NLRB for a year and a half. I'm also a fan of Candy Crowley's, so was sorry to have to write that comment.

Thanks again,

Nancy Cleeland

NLRB Director of Public Affairs

(202) 273-0222

nancy.cleeland@nlrb.gov

From: Tom Bettag [mailto:Tom.Bettag@turner.com]
Sent: Wednesday, April 27, 2011 3:26 PM
To: Cleeland, Nancy
Subject: Senator Graham's statements

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Tom Bettag

NLRB-FOIA-00002938

Microsoft Outlook

From: Farrell, Ellen
Sent: Friday, April 29, 2011 5:24 PM
To: Ahearn, Richard L.; Cleeland, Nancy; Solomon, Lafe E.; Garza, Jose; Kearney, Barry J.; Sophir, Jayme
Subject: Re: CNN questions on correction

[redacted] *Exemption 5*

Sent from my BlackBerry Wireless Handheld

From: Ahearn, Richard L.
To: Cleeland, Nancy; Solomon, Lafe E.; Garza, Jose; Kearney, Barry J.; Farrell, Ellen; Sophir, Jayme
Sent: Fri Apr 29 17:16:44 2011
Subject: RE: CNN questions on correction

[redacted] *Exemption 5*

Rich

From: Cleeland, Nancy
Sent: Friday, April 29, 2011 2:15 PM
To: Ahearn, Richard L.; Solomon, Lafe E.; Garza, Jose; Kearney, Barry J.; Farrell, Ellen; Sophir, Jayme
Subject: RE: CNN questions on correction

[redacted] *Exemption 5*

Nancy Cleeland
NLRB Director of Public Affairs
(202) 273-0222
nancy.cleeland@nlrb.gov

From: Ahearn, Richard L.
Sent: Friday, April 29, 2011 5:04 PM
To: Cleeland, Nancy; Solomon, Lafe E.; Liebman, Wilma B.; Garza, Jose; Kearney, Barry J.; Farrell, Ellen; Sophir, Jayme
Subject: FW: CNN questions on correction

[redacted] *Exemption 5*

Exemption 5

Nancy Cleeland
NLRB Director of Public Affairs
(202) 273-0222
nancy.cleeland@nlrb.gov

From: Sophir, Jayme
Sent: Friday, April 29, 2011 4:01 PM
To: Farrell, Ellen; Solomon, Lafe E.; Cleeland, Nancy; Liebman, Wilma B.; Garza, Jose; Ahearn, Richard L.; Kearney, Barry J.
Subject: RE: CNN questions on correction

Exemption 5

NLRB-FOIA-00002943

From: Farrell, Ellen
Sent: Friday, April 29, 2011 3:49 PM
To: Solomon, Lafe E.; Cleeland, Nancy; Liebman, Wilma B.; Garza, Jose; Ahearn, Richard L.; Kearney, Barry J.; Sophir, Jayme
Subject: RE: CNN questions on correction

[redacted]

Exemption 5

Ellen

Ellen Farrell
Deputy Associate General Counsel
Division of Advice, NLRB
202-273-3810
Ellen.Farrell@nlrb.gov

From: Solomon, Lafe E.
Sent: Friday, April 29, 2011 3:31 PM
To: Cleeland, Nancy; Liebman, Wilma B.; Garza, Jose; Ahearn, Richard L.; Kearney, Barry J.; Farrell, Ellen; Sophir, Jayme
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Exemption 5

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Exemption 5

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NLRB-FOIA-00002946