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Congress of the United States

House of Representatives

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November 9, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

For much of this year, the Committee has been investigating an enforcement action filed against the Boeing Company on April 20, 2011, by the National Labor Relations Board (NLRB) alleging that Boeing violated federal law by discriminating against its workers in Washington State. Specifically, the complaint alleged that Boeing moved its production of the 787 Dreamliner to South Carolina in retaliation against workers in Washington State who exercised their right to strike under federal law.

As I have said repeatedly, I believe it is an inappropriate use of Committee resources to interfere with this ongoing legal action in order to benefit the corporate interests of a single company. Nevertheless, you issued a unilateral subpoena on August 5, 2011, demanding that the NLRB produce to the Committee a wide range of internal documents relating to this legal action, including internal notes from Lafe Solomon, the NLRB's General Counsel, and Barry Kearney, the NLRB's Associate General Counsel.

These new documents, which the Committee has now obtained, raise troubling new questions about whether Boeing inappropriately sought to use its political influence in Congress to prevent the NLRB from filing its enforcement action against the company. These documents memorialize a series of telephone calls from Members of Congress and Boeing attorneys prior to the issuance of the complaint. For example:

- Mr. Solomon's notes indicate that on March 18, 2011, he received a call from Michael Luttig, Boeing's General Counsel, during which Mr. Luttig asserted that, rather than accept a potential settlement offer, "he thought that he would go to the Hill to prevent me from litigating the case."

- On April 8, 2011, Mr. Solomon received a call from Senator Lindsey Graham in which he stated that, if the NLRB proceeded with the complaint against Boeing, “the political fallout would be huge.” Senator Graham added that “he was more reasonable than his Senate counterpart (Sen. De Mint),” after which Mr. Solomon explained his hopes for a settlement and asked for Senator Graham’s assistance in speaking to Boeing.
- On April 11, 2011, Senator Graham called Mr. Solomon to inform him that “he had talked to Boeing, and they had no interest” in a settlement. He stated:

[I]f a complaint was filed, it will be “nasty,” “very, very nasty.” He said that this was a case of how not to grow the economy. He said that we had to do what we had to do, and he had to do what he had to do. It was up to us. He said if complaint issued, he was going “full guns a-blazing.”

- Notes from Barry Kearney, NLRB’s Associate General Counsel, indicate that on April 14, 2011, Boeing attorney William Kilberg called Mr. Kearney to inform him that “Boeing concurred that nothing more to discuss and he understood that meant complaint was likely to issue. Kilberg said that Boeing was going to the Hill to see if they could forestall issuing a complaint.”

Republican leadership in both the House and Senate have in fact fulfilled this threat to go “full guns a-blazing” against the NLRB. In September, Republican leadership in the House passed legislation to retroactively strip the NLRB of its authority to address unlawful transfers and outsourcing, which is the remedy sought in the Boeing case.¹ Representative Trey Gowdy also introduced legislation to dissolve the NLRB altogether.²

Unfortunately, our Committee appears to be an integral part of Boeing’s political campaign against the NLRB. The Committee has:

¹ *House Republicans Approve Bill to Protect Illegal Job Outsourcers*, House Committee on Education and the Workforce, Democrats (Sept. 15, 2011) (online at <http://democrats.edworkforce.house.gov/press-release/house-republicans-approve-bill-protect-illegal-job-outsourcers>).

² Congressman Trey Gowdy, *Rep. Gowdy Introduces Bill to Eliminate the NLRB* (Sept. 14, 2011) (online at <http://gowdy.house.gov/News/DocumentSingle.aspx?DocumentID=260122>).

- insisted that Mr. Solomon testify publicly even though the complaint against Boeing is currently being litigated;³
- issued a subpoena demanding a broad range of privileged and protected documents relating to the government's settlement and litigation strategies;⁴
- threatened contempt citations against NLRB officials;⁵ and
- threatened individual career NLRB attorneys with debarment.⁶

These actions underscore concerns I have raised on several occasions that the Committee's investigation fails to serve any "valid legislative purpose" as required by law.⁷

No corporation should be able to discriminate against American workers and then avoid accountability for its actions by using its political influence in Congress to seek to undermine the rule of law. These new documents raise serious concerns that this may be exactly what happened in this case. The ongoing legal proceeding should be allowed to take its full course without any further interference from Members of Congress.

Sincerely,



Elijah E. Cummings
Ranking Member

³ Letter from Chairman Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Lafe Solomon, Acting General Counsel, National Labor Relations Board (June 14, 2011).

⁴ House Committee on Oversight and Government Reform, Subpoena to Lafe E. Solomon, Acting General Counsel, National Labor Relations Board (signed Aug. 5, 2011; served Aug. 7, 2011).

⁵ Letter from Chairman Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Lafe Solomon, Acting General Counsel, National Labor Relations Board (Aug. 17, 2011).

⁶ *Id.*

⁷ *Wilkinson v. United States*, 365 U.S. 399, 408-09 (1961).