STATEMENT OF

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ACTING GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATED HOUSE OF REPRESENTATIVES

NORTH CHARLESTON, SOUTH CAROLINA
JUNE 17, 2011

Mr. Chairman and distinguished Members of the Committee:

I appear before you today as the Acting General Counsel of the National Labor Relations Board, having been appointed to this position by President Obama on June 21, 2010. For the 38 years before my appointment, I have served as a career civil servant in many positions throughout the Agency, ranging from field examiner, staff attorney, supervisory attorney, and finally, as a member of the Senior Executive Service.

I would like to start by acknowledging that workers in North Charleston are feeling vulnerable and anxious because they are uncertain as to what impact any final decision may have on their employment with Boeing. These are difficult economic times, and I truly regret the anxiety this case has caused them and their families. The issuance of the complaint was not intended to harm the workers of South Carolina, but rather, to protect the rights of workers, regardless of where they are employed, to engage in activities protected by the National Labor Relations Act, without fearing discrimination. Boeing has every right to manufacture planes in South Carolina, or anywhere else, for that matter, as long as those decisions are based on legitimate business considerations.

This complaint was issued only after the parties failed to informally resolve this dispute. I personally met with the parties and I tried for three months to facilitate a settlement of the case. I remain open to playing a constructive role in assisting the parties to settle this dispute without the costs and uncertainties associated with extended litigation. I believe that, given the parties' longstanding bargaining relationship, a settlement would serve the

interests of the parties and the workers and would promote industrial peace. In the absence of a mutually acceptable settlement, however, both Boeing and the Machinists Union have a legal right to present their evidence and arguments in a trial and to have those issues be decided by the Board and federal courts.

I would like to begin by describing briefly the relevant regulatory framework and the role of the Office of General Counsel within that framework. The National Labor Relations Act divides responsibility over private-sector labor relations between the National Labor Relations Board and the General Counsel of the Board. The Board adjudicates cases in accordance with the procedures set forth in the Act itself, the Administrative Procedures Act, and the Constitution. The Office of the General Counsel serves as a prosecutor of labor law violations in such cases.

The Office of the General Counsel was created by the Taft-Hartley Amendments of 1947. Under Section 3(d) of the amended Act, the General Counsel has "final authority", on behalf of the Board, with respect to the investigation and prosecution of unfair labor practice complaints. In order to ensure that the newly-established General Counsel of the NLRB would have both the independence and resources necessary to make final, unreviewable decisions in typically heated labor and management controversies, Section 3(d) also provided that, with the exception of administrative law judges and legal assistants to Board members, General Counsel "shall exercise general supervision over all attorneys employed by the Board" and would have general supervision "over the officers and employees in the regional offices." Like my predecessors, I have gone to

great lengths to ensure that all unfair labor practice charges, which must be initiated by private parties, are fairly considered, relying on "findings, reasons, precedents, checks through appeals and through internal supervision, and procedural protections." *See* K. Davis, *Discretionary Justice* 207 (1969).

To that end, all charges filed with our regional offices are carefully and impartially investigated to determine whether there is reasonable cause to believe that, under the Board's precedents, an unfair labor practice has been committed. Fairness to the parties and sound development of the law weighs in favor of presenting these types of cases to the Board for decision, subject to review by the courts. See Kenneth C. McGuiness, *Effect of the Discretionary Power of the General Counsel on the Development of the Law*, 29 Geo. Wash. L.Rev. 385, 397 (1960). I would not be fulfilling my responsibilities if I turned a blind eye to evidence that an unfair labor practice may have occurred. I took an oath to enforce the National Labor Relations Act and to protect workers from unlawful conduct.

The General Counsel's concern with fairness to the parties does not end with the issuance of the complaint. The Supreme Court has recognized that the Act and the Board's rules are designed to ensure that proceedings are conducted in a manner that respects the private rights of the charging party and the charged party. *Automobile Workers v. Scofield*, 382 U. S. 205, 217-221 (1965).

The Supreme Court has also recognized that "Congress intended to create an officer independent of the Board to handle *prosecutions,* not merely the filing of complaints." *NLRB v. United Food & Comm. Workers Un.*, 484 U.S. 112, 127 (1987) (emphasis in original). Thus, throughout the proceeding, the General Counsel remains master of the complaint and the charging party is not permitted to pursue alternative theories of a violation without the consent of the General Counsel. *See, e.g., Teamsters, Local 282 (E.G. Clemente Contracting Corp.),* 335 NLRB 1253, 1254 (2001). Throughout the proceedings, the General Counsel is responsible to ensure that the prosecution of the case is justified by the facts and law. As such, it remains open to the General Counsel to make concessions on issues of fact or law and to pursue settlement discussions with the charged party -- even over the objections of the charging party.

For all these reasons, the actual fairness of the proceedings before the Board -- and, equally important, the perception that the Board's administrative processes are fair -- vitally depends on the public and the parties retaining the confidence that the General Counsel is carrying out his prosecutorial responsibilities on the basis of the facts and law in the case, and is not making decisions on the basis of political or other matters not properly before the Board.

As you know, the Boeing hearing began on Tuesday of this week before an administrative law judge in Seattle, Washington. I am actively involved in overseeing the Boeing litigation and in strategic decisions necessary for the prosecution of this case. My obligation to protect the independence of the Office of the General Counsel and the

integrity of the enforcement process restricts my ability to offer insight into the decision-making here. I hope you will share my commitment that these proceedings not be construed as an effort by the Congress to exert pressure or attempt to influence my prosecutorial decisions in this case, which have been and will continue to be made based on the law and the merits and in a manner which protects the due process rights of the litigants.

I come here voluntarily out of respect for the oversight role of Congress. I will do my best to answer your questions, consistent with my obligations to the parties and to the American public with respect to the ongoing Boeing case. The adjudicatory process must be fair and impartial so that the parties' due process rights, which are guaranteed by the Constitution, are preserved. Our American legal system of justice is guided by these fundamental principles.

The General Counsel

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Lafe Solomon, a career NLRB attorney, was named Acting General Counsel by President Obama as of June 21, 2010. The Agency's top investigative and prosecutorial position, the General Counsel has supervisory authority over all Regional Offices and guides policy on issuing complaints, seeking injunctions, and enforcing the Board's decisions.

Mr. Solomon began his Agency career as a field examiner in Seattle in 1972. After taking a break to pursue a law degree, he returned as an attorney in the Office of Appeals. He transferred to the Appellate Court Branch in 1979. Two years later, he left the General Counsel side of the Agency to join the staff of former Board Member Don Zimmerman. He went on to work for another nine Board Members, including Donald Dotson, Robert Hunter, John Higgins, James Stephens, Mary Cracraft, John Raudabaugh, William Gould, Sarah Fox and Wilma Liebman.

A native of Helena, Arkansas, Mr. Solomon received a B.A. degree in Economics from Brown University in 1970 and a J.D. from Tulane University in 1976.

Mr. Solomon's nomination to serve as General Counsel was sent to the Senate on January 5, 2011.

Speeches and Testimony

Statement before the Subcommittee on Labor, Health, and Human Services, Education, and Related Agencies, Committee on Appropriations, United States House of Representatives, April 6, 2011. [1]

Click here for a list of General Counsels since 1935. [2]

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