

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES, SAN FRANCISCO BRANCH OFFICE**

**THE BOEING COMPANY**

**and**

Cases 19–CA–090932  
19–CA–090948  
19–CA–095926

**SOCIETY OF PROFESSIONAL  
ENGINEERING EMPLOYEES IN  
AEROSPACE, IFPTE LOCAL 2001**

*Irene Hartzell Botero*, counsel,  
for the General Counsel.  
*Charles N. Eberhardt, Esq. (Perkins, Coie LLP)*,  
for the Respondent Company.  
*Thomas B. Buescher, Esq. (Buescher,  
Goldhammer, Kelman & Perera, P.C.)*, for the Union.

**DECISION**

**GERALD M. ETCHINGHAM, Administrative Law Judge.** This case was tried in Seattle, Washington, from September 24 – 26, 2013. Charging Party, The Society of Professional Engineering Employees in Aerospace, IFPTE Local 2001 (Engineers’ Union, SPEEA, or Union) filed the charges and amended charges in these three consolidated cases beginning on October 9, 2012,<sup>1</sup> and at various times through April 12, 2013.<sup>2</sup>

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<sup>1</sup> All dates are in 2012 unless otherwise indicated.

<sup>2</sup> A portion of this consolidated action was severed in a late August 2013 conference call with the parties’ counsel and administrative law judge prior to hearing and confirmed at the beginning of hearing such that for this decision pars. 7(b), 8, 11, and 13 of the consolidated complaint are severed and litigated subsequently at a later hearing. Tr. at pp. 5–8; General Counsel Exhibit (GC Exh. ) 1(v). For ease of reference, testimonial evidence cited here will be referred to as “Tr.” (Transcript) followed by the page number(s).

The General Counsel issued the consolidated complaint and notice of hearing on April 29, 2013.<sup>3</sup>

5           The complaint alleges that Respondent, The Boeing Company (Respondent/Employer),  
violated Section 8(a)(1) of the National Labor Relations Act (NLRA/the Act) when on four  
separate dates it engaged in surveillance or created an impression of surveillance and  
photographed Engineers' Union employees during a Union march<sup>4</sup> or while participating in  
10       protected concerted activities at Respondent's facilities in Everett and Renton, Washington, and  
Portland, Oregon. The complaint also alleges that Respondent violated Section 8(a)(1) of the  
Act when it promulgated and maintained Procedure PRO 2783 (the Rule) which states that use  
of employees' personal camera-enabled devices "to capture images or video is prohibited  
without a valid business need and an approved Camera Permit that has been reviewed and  
15       approved by Security." Respondent denies that it has violated the Act in any way.

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<sup>3</sup> Fn. 2, at p. 3 of Respondent's closing brief (R. Br.) refers to Respondent's earlier motion to dismiss based on allegations that the complaint in this case "was unauthorized and void" because the prior Acting General Counsel lacked authority to delegate the issuance of the complaint in this case to the Regional Director. I find no merit in the Respondent's contention that the Acting General Counsel lacked the authority to prosecute this case. The Acting General Counsel (AGC) was properly appointed under the Federal Vacancies Reform Act, 5 U.S.C. § 3345 and not pursuant to Sec. 3(d) of the Act. See *Muffley v. Massey Energy Co.*, 547 F.Supp. 2d 536, 542–543 (S.D.W.Va. 2008), *affd.* 570 F.3d 534 (4th Cir. 2009) (upholding authorization of a 10(j) injunction proceeding by Acting General Counsel designated pursuant to the Vacancies Act). See *The Ardit Co.*, 360 NLRB No. 15 (2013). In addition, the motion to dismiss was denied because at the time of hearing the AGC was still actively considering an appeal of the [8/13 D.Ct. Order]" As such, I find that the 8/13 D.Ct. Order is not final and currently has no relevance to this administrative adjudication of the complaint or the instant motion. Moreover, I further find that Respondent's argument that the Board lacks a constitutionally valid quorum is inapplicable to this case because this question about the Board's validity remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act. See *Bloomingtondale's Inc.*, 359 NLRB No. 113 (2013)(Board rejects same argument for the same reasons.). More importantly, as pointed out by the AGC, I further find that the AGC's authority to issue and prosecute a complaint is unaffected by any issue concerning the composition of the Board. See e.g. *NLRB v. Food Workers Union*, 484 U.S. 112, 126–128 (1987); *NLRB v. FLRA*, 613 F.3d 275, 278 (D.C. Cir. 2010)).

<sup>4</sup> The terms solidarity walk(s) and mass march(es) are used interchangeably in this decision and mean the same thing. In this case, they are basically a group of Respondent employees belonging to the Engineers' Union who got together to walk and march through various areas on or near Respondent's facilities during contract negotiations for a new collective-bargaining agreement.

On the entire record<sup>5</sup>, including my observation of the demeanor of the witnesses, and after considering the posthearing briefs<sup>6</sup> filed by the General Counsel, Respondent, and the Engineers’ Union, I make the following

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## FINDINGS OF FACT

### I. JURISDICTION

10 The parties admit and I find that Respondent is a Delaware corporation with its headquarters in Chicago, Illinois, who manufactures and produces military and commercial aircraft at various facilities throughout the United States, including Everett and Renton, Washington, and Portland, Oregon. The parties further admit and I further find that during the preceding 12 months of the relevant dates of the various charges in this case, Respondent derived gross revenues in excess of \$500,000 in conducting its business operations and during 15 the same time periods while also conducting its business operations, it both sold and shipped from, and purchased and received at, the facility goods valued in excess of \$50,000 directly to and from points outside the State of Washington.

20 I further find and it is also admitted that Respondent is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

It is also admitted, and I so find, that the Engineers’ Union is a labor organization within the meaning of Section 2(5) of the Act at all relevant times leading to this proceeding.

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### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. OVERVIEW OF RESPONDENT’S OPERATIONS AND FACILITIES IN THE PACIFIC NORTHWEST

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##### 1. Respondent

35 Respondent operates a division of its company in the States of Washington and Oregon known as the Commercial Airplanes Division (CAD) which designs and builds airplanes for the commercial passenger and freight market and produces military derivatives of commercial aircraft for the U.S. Government. This case involves Respondent’s CAD operations at its facilities in Everett and Renton, Washington and Portland, Oregon where Respondent primarily performs commercial airplane work, but it also performs military systems and aircraft work,

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<sup>5</sup> I hereby correct the transcript as follows: Tr. 608, line 16: “I will offer it as substantive evidence” should be “I will not offer it as substantive evidence.”; Tr. 659, line 9: “March” should be “march”; Tr. 661, line 17: “formed” should be “informed.”

<sup>6</sup> Documentary evidence is referred to either as “GC Exh.” for a General Counsel exhibit, or “R Exh.” for a Respondent exhibit. References to post-trial briefs shall be either “GC Br.”, “R Br.”, or “CP Br.” followed by the page numbers. Citing to specific evidence in the record is for emphasis and there may be additional evidence in the record that supports a finding of fact or conclusion of law.

including some classified work which is conducted in marked areas or behind closed doors that require further security clearance not involved in this case.

5           2. Two separate Unions - Engineers' Union and Machinists' Union

10           The Engineers' Union represents salaried professional (engineering) and technical employees in Washington and Oregon. These units comprise approximately 24,000 Respondent employees, most of who work in the Puget Sound region in Washington, with the highest concentration at the Everett facility. Approximately 200 of Engineers' Union's members work at Respondent's Portland facility.

15           Respondent and Engineers' Union have a long and stable collective-bargaining history dating back to 1946 for the professional unit and 1972 for the technical unit. In the fall of 2012, the parties were negotiating successor labor contracts which were signed in the first half of 2013, retroactive to October 2012. Many of the Engineers' Union employees at Respondent are white collar workers with extensive secondary education who work primarily in office environments away from the factory and production floor though many of them walk the factory floor to and from their jobs. Prior to August 2012, the Engineer's Union had not engaged in any marches inside Respondent's facilities during contract negotiations.

25           Respondent's other larger union, the International Association of Machinists (the Machinists' Union) comprise the vast majority of Respondent's hourly-wage employees in the factory and production floor areas in Washington and Oregon and they perform blue collar production and maintenance work, including machining, assembly, tooling, material support, and parts movement, including forklift and crane operation. Unlike the Engineer's Union, for many years prior to 2012, the Mechanic's Union held lunchtime marches with staggered lunches. (Tr. 40–41, 53, 57.) Respondent admits to never trying to stop the Machinist marches. (Tr. 708.)

30           As a result of these Machinists' Union marches, Respondent created a document in 2008 which it used to train its managers and security guards regarding procedures to follow during workplace marches (the March Rule). (Tr. 34–35, 60; GC Exh. 27.) This included security guards providing bicycle or patrol car escorts to Machinists' marchers over the years before 2012 at the front and back of each march.<sup>7</sup> The lead guard would stop vehicles and forklifts and clear transportation aisles along the march route, and the guard in the back of the march would prevent vehicles from approaching or passing the marchers from behind. The Machinists' Union never questioned or objected to Respondent's developed its own practices or rules for Machinists' Union marches.

40           Respondent's security personnel also prepare and file written Uniformed Security Incident Reports (USIR's) when they respond to various incidents on Respondent property that affect people, buildings, equipment, safety, or accidents. These reports evolved over time as

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<sup>7</sup> The Machinists' Union did not conduct mass marches in 2012. R. Br. at 9.

they also summarize pertinent details of the incident and began to include photographs taken of individuals, equipment, or property related to the incident.<sup>8</sup>

5 No violence, rioting or safety issues were recorded nor did security record any incidents of Machinists' Union employees disrupting production during a march. (Tr. 61–62.) What further evolved from the Machinists' marches and the March Rule was that the security guards routinely completed and filed USIR's documenting the time, location, march participants, route, and any notable interactions of each Machinist march. In addition, Respondent's security guards' practice during the Machinists' marches was to provide an escort in the front and rear of the march and to stop vehicular traffic along the route. (Tr. 442, 501.) No evidence was presented that the Machinists' Union ever objected to the taking of photos by Respondent's security personnel documenting the Machinists' marches.

### 15 3. Respondent's secured facilities

Access to Respondent's facilities is controlled through fences and security guards and authorized personnel use security badges to gain access to various parts of the facilities through pedestrian gates. Once access is gained to the general factory areas, additional stricter levels of security are required to gain further access within the facilities to classified areas designated by additional locked doors or cordoned-off areas marked as top secret or containing classified information.<sup>9</sup>

25 In addition to personnel, vehicles must also pass through gates staffed at Respondent's facilities by uniformed security guards. More than protecting personnel and property by staffing perimeter gates, Respondent's security guards also support special events, perform traffic control, enforce vehicle and pedestrian safety rules, respond to incidents and medical emergencies, perform first aid, supply security escorts, and help employees with car unlocks, jumpstarting dead batteries, and computer cable unlocks.

30 At Respondent's factories, a constant stream of truck, forklift, and other vehicle and equipment traffic inside and around these large factory buildings throughout the workday sometimes puts employees at risk. Respondent has developed and published various specialized safety rules to address dangers unique to the factory environment, including rules for pedestrian walkways, transportation aisles, interactions between pedestrians and vehicles inside the factory, overhead-door safety, over-head crane safety, and eye safety. Respondent's employees do not always follow these safety rules yet in this case no evidence was presented that any Engineers' Union employee was cited or disciplined by Respondent for any alleged safety violation during the last half of 2012.

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<sup>8</sup> This is in contrast to Respondent's earlier instructions to its security personnel not to photograph or record "peaceful" picketing. See GC Exh. 31 at 4. The Machinists' marches also resulted in further instruction that Respondent's security personnel photograph and document "behavior which is disruptive or unsafe." *Id.*

<sup>9</sup> None of the facts in this case involve allegations that any Engineers' Union members tried to march or gain access to top secret or classified areas at Respondent's facilities anytime in late 2012.

## B. RESPONDENT’S CHALLENGED RULES

### 1. The revised March Rule

5 In late summer, early fall 2012, Engineers’ Union employees began to wear red union  
shirts on Wednesdays and engage in peaceful solidarity walks or marches in and around  
Respondent’s facilities in Everett and Renton, Washington, and Portland, Oregon, to show their  
support for the Union during contract negotiations. Prior to late summer 2012, there had been  
no marches at Respondent’s facilities by the Engineers’ Union. (Tr. 36, 56, 664.) The decision  
10 to photograph was made by Respondent before any of the Engineers’ Union marches in the fall  
of 2012. (Tr. 35–36; GC Exh. 27.)<sup>10</sup>

Respondent updated the March Rule in August 2012 and presented it to its managers  
and security guards in September for training in connection with the Engineers’ Union contract  
15 negotiations taking place at that time. (Tr. 35–36, 469, 479, 536; GC Exhs. 27, 31 and 32.)  
Respondent’s express instructions to its security guards before the Engineers’ Union marches  
took place was to “[o]penly communicate with picketing employees when a safety hazard  
exists.” GC Exh. 32 at 4.) The 2008 security officer etiquette training, however, instructed  
security guards *not* to record peaceful picket line conduct. (GC Exh. 31.) Respondent’s  
20 directive to its guards *not* to record peaceful picket line conduct was removed from the security  
officer etiquette training document by September 2012 and the Engineers’ Union marches. (GC  
Exh. 32.)

Also as of August 2012, Respondent’s managers were required by the March Rule to  
25 notify security immediately for videotape support if a workplace march occurred. (GC Exh. 27  
at 4.) The March Rule also requires managers to notify employees of the potential for  
corrective action and pay impact for unacceptable conduct during mass marches. (GC Exh. 27  
at 5.) Respondent completed USIR’s and photographed and videotaped the Engineers’ Union  
members during these walks in the Everett factory facility on September 19 and December 12,  
30 at the Portland 85–001 Building on October 3, and outside the Renton plant near the D-9 gate  
on September 26, 2012 as referred to below in more detail. (Tr. 45–48, 51, 453, 529–530, and  
663; GC Exhs. 24, 25, 29(b), 30, 33–35.)

The lunchtime walks were peaceful and no Engineers’ Union member was disciplined  
35 for their conduct during any of these four walks. (Tr. 470, 718, and 721; GC Exh. 29(b); GC  
Exh. 33.) Respondent’s admitted custom and practice is not to discipline any groups of  
employees or march participants who may violate safety rules during marches such as failing to  
wear safety glasses in the factory or walking briefly outside the pedestrian walkway. (Tr. 527–  
528, 722.)

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#### (a) The Everett, WA facility

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<sup>10</sup> Respondent’s security guards’ training provides that if a march occurs management is  
supposed to notify security “immediately for video-tape support . . .” GC Exh. 27 at 4. This  
training was created in 2008 in anticipation of Machinists’ Union marches. Tr. 40.

Respondent’s Everett facility is where the Engineers’ Union conducted its September 19 and December 12 lunchtime red-shirt walks. The walks took place on the factory floor where there are no classified areas. (Tr. 73–74, 93, 151–153, 430–431, 437–438; GC Exhs. 2–3.)

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The Everett factory building is one of the largest enclosed buildings in the world estimated to measure six football fields in total volume. (Tr. 216, 218.) It is approximately six or seven stories high with offices above the factory floor at certain locations. (Tr. 74, 216.) The factory building houses the main manufacturing areas for Respondent’s airplane models 747, 767, 777, and 787. (Tr. 567; GC Exh. 3.<sup>11</sup>) Production of the airplanes moves from north to south, with all but the 767 model moving out of the south bay doors on completion. (Tr. 568.)

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Approximately 42,000 employees worked at the Everett facility in 2012 and of these, about 19,500 were Machinists’ employees and about 12,000 were Engineers’ Union employees. (Tr. 703, 715.) Engineers’ Union members worked on the factory floor in cubicles with Machinists, in closed offices and elsewhere and approximately 1,800 Engineers’ Union members working in the entire factory building on three shifts with 1,200 of them on first shift. (Tr. 200, 716.) Of the 1,800 Engineers Union members working in the factory building, at least 300 worked directly on the factory floor in cubicles and 200 of those worked the first shift. (Tr. 92, 127, 633–634, 704.) Approximately 150-300 Engineers’ Union members walked at lunch on September 19 and December 12, 2012.

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A main transportation aisle, which is referred to by employees as “main street” runs east to west through the factory building. (GC Exh. 3.) Forklifts and other vehicles use the transportation aisles to move equipment and parts around the factory. Forklift traffic is intermittent and employees are trained to be aware of this traffic as they move around the factory. (Tr. 203.) A pedestrian aisle parallels the main aisle on the north side. (Tr. 105, 207–208; GC Exh. 3.) Another major transportation aisle paralleled by a pedestrian aisle on the west side runs north to south in the 40–25 factory building through the model 777 final assembly line. (Tr. 217–218; GC Exh. 3.) There are a number of pedestrian aisles running throughout the factory that are stand-alone aisles which do not parallel transportation aisles and there are pedestrian tunnels running under the factory floor for employees to use though they do not always connect with each other. (Tr. 188, 201, 216, 218.) There are crosswalks at most intersections throughout the factory with accompanying stop signs for both pedestrians and vehicles. (Tr. 296; GC Exh. 3.)

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All Respondent employees whose jobs take them to the factory floor are required to take an annual safety course on factory operations. (Tr. 236.) The course instructs employees regarding the guidelines to follow in the event of an overhead crane move—to stop, look up, to watch and to stay out of the area of the crane envelope, and, if possible, to stand under a

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<sup>11</sup> GC Exh. 3 is a to-scale schematic of the Everett facility, which shows the different airplane production lines and major transportation corridors. It also shows the alpha-numeric column grid used to identify locations and features within the factory. Columns on the east-west axis are identified by letters from A (at the west extreme) to R (at the east extreme) of the 40–26 building. Columns on the north-south axis are identified by numerals from 1 (at the south wall) to 17 (to the north).

structure. (Tr. 236, 297.) During crane moves, large signs measuring 8–10 feet long and about 4 feet high are moved by the crane crew near the crane move area to alert employees that there is an impending move. (Tr. 156, 297–298; GC Exh. 22.) The crane crew wears orange and white helmets and gathers and arranges the crane in position, the crane operator sounds the crane horn, cords are lowered down from the crane, the crane horn usually goes off again and indicator lights start flashing. (Tr. 237.) Employees are not notified in advance that there is going to be a crane move, and they simply follow the training they have received when encountering workers about to begin to move and operate the crane. (Tr. 238–239.)

Employees and managers, however, frequently walk in the transportation aisles of the factory building and not the adjacent pedestrian lane during shift changes which occur approximately three times per day, during break times, during emergency evacuations, when parts or equipment block the pedestrian lanes, and when employees are cutting across the factory taking the shortest route between two points. (Tr. 130, 137–139, 188, 241242, 246–247, 641; GC Exhs. 1719.) There are often hundreds of employees in the transportation lane during shift breaks and changes. (Tr. 243.) Employees have not observed security guards taking photos of workers in the transportation aisles under these circumstances. (Tr. 189, 302–3-03.)

Non-material handling pedestrians are often in the apron area outside the factory building. (Tr. 174.) It is the normal custom and practice for employees at Respondent to regularly walk through large overhead bay doors in the factory as well as overhead doors inserted within the bay doors, despite guidelines advising employees not to do so. (Tr. 172–173, 175, 244, 254–255.) Respondent does not discipline employees for disregarding this safety guideline. (Tr. 256, 473–474.) Nonetheless, the overhead doors have a switch that pedestrians can flip to keep the doors locked open. (Tr. 623, 644–645.) Security guards do not normally take photos of employees walking through overhead doors, or of employees who are walking through the factory without their safety glasses on, or generally at any other time other than during Engineers’ Union member marches or walks. (Tr. 176, 240, 246, 291.)

(i) The September 19 Engineers’ Union March at the Everett Plant

On September 19, approximately 150–300 Engineers’ Union employees gathered for approximately 10 minutes near the in-house Tully’s Coffee Shop (Tully’s) location within the factory building during their lunch hour around 11 a.m. for their first Everett march wearing their red Union shirts and carrying various signs which read, “No nerds No birds,” “We delivered,” “We’re Boeing,” “Not my pension,” and “I’m voting No.” (Tr. 73, 78–79, 105, 119–120, 124, 183, 187, 214; GC Exh. 4, GC Exh. 5.)

The described purpose of this red-shirt walk was to march around the factory to show solidarity among Engineers’ Union members during their contract negotiations with the Respondent. (Tr. 72–73, 118, 183, 213–214.) Engineers’ Union employee Suzanne Kamiya recognized the walk participants as mostly comprised of those working in the factory building. (Tr. 95, 200.) The employees were chatting with each other and chanting slogans, such as “I’m voting No.” (Tr. 79, 151.)

Respondent was advised of the march prior to its occurrence and had dispatched guards Jeffery J. Catalini (Catalini) and Dave Lopez (Lopez) for bike patrol duty along the walk. (Tr.

503.) Security guard Kelly Hess (Hess), Catalini’s and Lopez’ supervisor, was also present during the walk. (Tr., 282, 445, 483.) These guards photographed Engineers’ Union members who were gathering mainly along the pedestrian aisles and crosswalks located at the intersection closest to the Tully’s. (Tr. 79-80, 107, 234–235, 482; GC Exh. 3.) As per the  
5 guards, the purpose of their photographing the walk was to show the scope of the crowd size for the first Engineers’ Union walk at the facility. (Tr. 451, 473.) Catalini testified that before the September 19 march he and Lopez were instructed by Hess to “[d]ocument the scope and size of the crowd, any intimidating factors.” (Tr. 480, 538.) These guards did not speak with or say anything to the employees at the time other than to ask them what their planned route was.  
10 (Tr. 235, 470.)

While gathered at Tully’s, workers not participating in the walk were able to navigate down the transportation aisles riding tricycles with cargo boxes. (Tr. 494; GC Exh. 29(b), photo 1.) If vehicles could not get through the Tully’s intersection, it was because security guards  
15 prevented them from passing. (Tr. 492.) After gathering for approximately 10–15 minutes by the Tully’s, employees walked south down the H transportation aisle, using the pedestrian walkway that paralleled it as much as possible. (Tr. 81–82, 106, 108, 110, 262; GC Exh. 3.)

The employees in the red-shirt walk then continued out of the factory building onto the apron, moved east on the apron, re-entered the factory at the 40–25 building, proceeded north  
20 on the pedestrian aisle located in the middle of the 777 final assembly line, up to the main transportation aisle, and turned west on the pedestrian aisle paralleling the main transportation aisle back to Tully’s. (Tr. 85–86, 91, 110, 185; GC Exh. 3; GC Exh. 29(b).)

Engineers’ Union members Suzanne Kamiya and Scott Steffen convincingly testified that as walkers left Tully’s and began the walk, a security guard photographed the marchers while on a bicycle from about 20-50 feet away, blocked their path and continued to take photos of the walkers as they approached him, forcing them to walk around him on their way down the H aisle. (Tr. 83–84, 109; GC Exh. 3.) Guard Catalini, who was on a bicycle during the march,  
30 admitted he took photographs of walk participants when they entered the 40–24 production area. Photo 7 of GC Exh. 29(b), taken by Catalini, documents the scene as testified by Kamiya, Steffen, and Catalini. (Tr. 451, 472; GC Exh. 29(b).)

Engineers’ Union employee Scott Peters observed a guard on a bicycle photographing employees while they were out on the apron for a few minutes. (Tr. 187, 469.) Peters credibly noted that he had never previously seen a Respondent guard take photos of employees during the course of his 23-year employment with Respondent. (Tr. 178, 191.) Catalini admitted taking photographs of employees who had gathered on the apron for a couple of minutes until the full group came out of the building and headed east and testified that he took photos on  
40 September 19 “just to show the scope of the crowd size for the first SPEEA march that we encountered.” (Tr. 451, 468, 473.) Catalini’s September 19 USIR corroborates employee testimony regarding photographs taken by security guards of the walkers at various points along the route. (Tr. 452–453; GC Exh. 29(b).) Security guards did not instruct the walkers to stay in the pedestrian lanes nor did they direct any of the walkers to or out of a particular area.  
45 (Tr. 247, 474.) In addition, guards testified it was not their role to direct or interact with the walkers; rather, their role was to provide an escort in the front and the rear of the walk, and to document the walk with photography. (Tr. 447, 474.)

The Engineers' Union members testifying at hearing believably expressed that as a group it was not their intent as marchers to block pedestrian or vehicular traffic or to shut down work being performed by the Machinists' Union members or others during the walk. (Tr. 82, 145–146, 189–190.) The Respondent's guards, and not the Engineers' Union members, temporarily stopped vehicular traffic to allow the marchers to proceed along their route. (82, 85, 145–147, 176, 190–191, 262, 462, 465, 545, 553.) While Guard Lopez estimated that the September 19 walk took approximately 15–25 minutes to complete, generally the estimate by employees was that the walk took from 40–45 minutes to complete and was conducted primarily during the Engineers' Union members' lunch period. (Tr. 83, 86, 114, 187, 540.)

The march did not materially impact or slowdown work being performed at the factory, production which occurs generally nonstop 24 hours a day, 5 days a week at Respondent. (87, 111–112, 123, 151, 577–578, 642, 648.) Any chanting or other noisemaking engaged in by the marchers blended in or was drowned out by the usual loud factory noise made by non-march workers in the normal course of their workday from operating forklifts, rivet guns, scissor lifts, welding guns, and cranes. (88–89, 151, 477.) The single witness testimony to the contrary is rejected as outweighed by more credible testimony denying the use of air horns and by the fact that Guard Catalini's USIR did not indicate that air horns were used by the marchers, the path taken by the marchers did not pass by any marked restricted areas, and the USIR itself provides that "the rally was conducted without incident" and that "[n]o derogatory signs or chants were seen or heard." (Tr. 153, 164, 711; GC Exh. 29(b).) While the photos taken by Catalini were not of individual marchers, the faces of various marchers in most of the photos are clear enough to identify individual SPEAA employee marchers. (GC Exh. 29(b).)

(ii) The December 12 Engineers' Union March at the Everett Plant

Like its earlier September march, the Engineers' Union conducted a December 12 red-shirt walk that started and ended at the Tully's in the Everett factory building during the union members' lunchbreak and took approximately 40 minutes to complete.<sup>12</sup> (Tr. 218–219.) Also as before, approximately 150–250 Engineers' Union members participated in the march to show solidarity during contract negotiations with Respondent. (Tr. 214–215, 219, 282, 284; GC Exh. 34.) The Engineers' Union did not instruct its members to disrupt factory work during the march. (Tr. 241.)

The march began at approximately 11 a.m. at the Tully's location and security guards Hess and Lopez were dispatched to control traffic for the march after a guard reported employees wearing red Engineers' Union shirts gathering in the factory at Tully's. (Tr. 222, 283, 504.) Guard Lopez prepared a USIR for the march and attached to the report photographs taken by guards of the marchers at various points along the way. (Tr. 514; GC Exh. 34.)

Similar to the September march, employees held posters during the march that said, "No Nerds No Birds," "We Don't Need Corporate Greed," "We Delivered, Will Boeing," and "Respect be it to the Max," and chanted slogans throughout various points along the route. (Tr.

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<sup>12</sup> Guard Lopez estimated that the December 12 march took approximately 15 minutes to complete. Tr. 540.

219, 229.) Slogans were chanted repeating the various posters messages and the spelling of the members' union "S-P-E-E-A." (Tr. 220.) As before, any chanting or other noisemaking engaged in by the marchers blended in or was drowned out by the usual loud factory noise made by non-march workers in the normal course of their workday from operating forklifts, robotic machines, rivet guns, general banging or hammering, scissor lifts, welding guns, and cranes. (Tr. 221, 291–292.)

At the start of the march, a vehicle stopped for the marchers as they were heading west along the pedestrian aisle adjacent to the transportation lane. (Tr. 293, 308.) The vehicle waited no more than a minute or two for the remaining 75 marchers to pass before passing though. (Tr. 293.) On two other occasions, vehicles moved adjacent to the marchers who were in pedestrian aisles and throughout the march, employees made an effort to stay in the pedestrian walkways and out of the transportation aisles during the march. (Tr. 250, 254, 294, 511, 521: GC Exh. 3; GC Exh. 34.) On one other occasion, marchers encountered a truck at the end of the 40-21 building and waited for the truck to pass on before they crossed over the transportation aisle. (Tr. 295; GC Exh. 3.)

The marchers moved west down the main transportation aisle, headed south halfway down the transportation aisle located in the middle of the 40–21 building, and followed the pedestrian paths heading eastbound through the 40–22, 40–23, 40–24, and 40–25 buildings. They next intersected the transportation aisle in the 40-25 building, headed south along that lane until intersecting another pedestrian aisle, and turned east until arriving at the building 40-26 bay. At that point, they headed northward in the pedestrian aisle of the same 40-26 building until it intersected with the main transportation aisle, crossed over that aisle and then headed west along the pedestrian pathway back to the Tully's. (Tr. 222–223, 230, 250–252, 285; GC Exh. 3; GC Exh. 34.)

Marchers followed the pedestrian aisle which was located between two aircraft in positions one and two when employees entered the 777 area of the factory in the 40–25 building. (Tr. 618; GC Exh. 3; R. Exh. 5.) Machinists performing prep work for functional tests up around the vertical stabilizer paused for approximately 10–25 minutes to continue their work while the marchers completely passed by. (Tr. 619, 642, 647–648.) Jason Clark (Clark), Respondent's director of manufacturing and operations of the 777 airplane, opined that this brief pause in work and even a 20 minute pause in work did not delay the delivery date of any of the aircraft. (Tr. 563, 605, 642.) In addition, no crane moves were noted by the marchers along the route used on December 12. (Tr. 237, 300.)

Engineers' Union member Sandra Hastings (Hastings) witnessed a Respondent security guard taking photos of the marchers with what appeared to her to be a cell phone when the marchers were walking east between building 40–24 and building 40–25 through rows J, K, and L. (Tr. 290; GC Exh. 3.) At that same time, marchers were walking and chanting but they were not blocking vehicular or pedestrian traffic nor were they interfering with any work going on at the factory. (Tr. 290, 292.)

Because there was no crosswalk across the transportation aisle, marchers looked both ways and crossed over the main transportation aisle to get to the pedestrian path located along the north side of the main transportation aisle when marchers first arrived at the end of the

pedestrian aisle as they headed north along the 40-26 building. (Tr. 223-224; GC Exh. 3; GC Exh. 10; GC Exh. 34.) It took the entire group of marchers less than 5 minutes to all cross between the two pedestrian walkways across the main transportation aisle – a common practice by all Respondent employees, union and nonunion, who frequently cross the main transportation aisle at this location to get to the pedestrian aisle without taking an alternative route. (Tr. 227, 640–641; GC Exh. 3.)

At this point near the end of the march, Guard Lopez stopped his vehicle in the main transportation aisle to photograph marchers and to prevent vehicular traffic from proceeding down the transportation aisle. There was, however, no vehicular traffic stopped there as the marchers crossed over the aisle to get to the pedestrian aisle. (Tr. 227–228, 513.) Guard Lopez was also observed photographing marchers a second time while inside his vehicle at location I-12, building 40–24, approximately 10–12 minutes after Lopez was initially observed taking photos. (Tr. 228–229; GC Exh. 3.) Lopez testified that he took photos on December 12 “to ensure safety and to document the event.” (Tr. 509.) Engineers’ Member Shannon Moriarty (Moriarty) was gathering employees and leading some chants at that time before marchers were dismissed to go back to work. (Tr. 229.) As before in September, there was no material interference with any work performed at the factory. (Tr. 229, 241, 642; GC Exh. 34.) While the photos taken by Lopez were not of individual marchers, the faces of various marchers in most of the photos are clear enough to identify individual SPEEA employee marchers. (GC Exh. 34.)

(iii) December 12 Interaction Between Ms. Moriarty and Mr. Lopez at Everett

Engineers’ Union members observed Guard Lopez a third time sitting in his security vehicle in the main transportation aisle at the intersection closest to the Tully’s in the factory building on December 12. (Tr. 230. GC Exh. 3; GC Exh. 11.) At this time, Lopez engaged in two short conversations with two employees – Moriarty and Hastings.

When Moriarty approached Lopez parked in his vehicle, she stated: “I noticed you were taking photographs of our group.” (Tr. 231.) Lopez responded: “I’ve been directed to document all union activities.” Id. Lopez admitted the same with his testimony but added that the photos were “to ensure safety.” (Tr. 509.) Moriarty replied: “It makes our folks feel a bit uncomfortable.” Id. Moriarty further reported that in conflict with Lopez’ testimony, he did not tell her he was taking photos to ensure compliance with safety or to document traffic or safety concerns and he clearly indicated to her that he would continue to document and take photos to document in his report that 250 individuals participated in the walk. (Tr. 231, 523.) Lopez’ USIR provides that 200–250 SPEEA members participated in the march. (GC Exh. 34.)

As their discussion was ending, Engineers’ Union member Hastings approached Lopez and Moriarty and began to speak with Lopez as Moriarty left the group. (Tr. 232-233.) Hastings asked Lopez twice what he was doing with his camera and each time he replied that he was taking photos of non-Boeing activity. (Tr. 288.) Hastings then asked Lopez why he was taking these photos and he responded by saying: “We always do this [photo taking].” Id. No testimony was presented that during their conversation Lopez told Hastings that he was taking photos to ensure compliance with safety standards or to document safety concerns or violations.

(Tr. 289.) At the end of these conversations, the march was winding down and there were approximately 15 marchers remaining leaving the pedestrian aisle and not blocking any vehicular or pedestrian traffic or interfering with plant operations. (Tr. 288–289.)

5 Both Moriarty and Hastings opined that neither Lopez nor any other guards directed vehicular or pedestrian traffic during the march and Lopez’ report is silent with respect to engaging verbally with employees or otherwise directing traffic as it indicates that he merely observed Engineers’ Union employees and photographed them. (Tr. 240, 303; GC Exh. 32.)

10 Lopez testified: “I was in my vehicle and I was approached, and I was questioned why we were taking photographs. And my reply to her was that I am taking photograph[s] at the request of my management. And we take those pictures to document safety and the review of safety.” (Tr. 523.) Also, Lopez’ version of his interaction with Hastings was that it was just a “short little hi, how you doing” with nothing related to photographs. Id.

15

(b) The September 26 Engineers’ Union walk at Respondent’s Renton, Washington Facility

20 Respondent’s Renton plant is located along the southern end of Lake Union near a commercial development called The Landing. (Tr. 419–420, 691; GC Exh. 12.) Respondent manufactures its 737 airplane at the Renton facility. (Tr. 420.) About 12,000 to 13,000 employees work the day shift at the Renton plant. (Tr. 697.)

25 On Wednesday, September 26, at 11 a.m. at the southwest corner of the 482 building, an ice cream social was held by the Engineers’ Union at the Renton plant after a red-shirt walk to show union solidarity. (Tr. 318–320.) The last group of marchers arrived at approximately 11:20 a.m. to join their coworkers at the social. (Tr. 320.) Approximately 500 employees gathered at the social to listen to Engineers’ Union president, Tom McCarty, (McCarty) provide a contract negotiation update. Id.

30 Respondent’s security personnel had been advised prior to the social that an Engineers’ Union rally was going to take place in front of the 481 and 482 factory buildings. (Tr. 685.) After approximately 5–10 minutes, McCarty led a group of about half of the attendees outside the Renton plant, through the pedestrian gate, D9, to the northwest intersection of Park and Logan Avenue. (Tr. 320–321; GC Exh. 14.) Employees stood and chanted on the intersection for about 15–20 minutes. (Tr. 324, 695.)

40 Soon after arriving at the intersection, employee Benjamin Braatz (Braatz) observed Respondent guard Dean Torgude (Torgude) taking photos of the workers who were gathered at the intersection. (Tr. 323–324.) Torgude was positioned inside a security vehicle, with his arm extended outside the vehicle, holding a photographic device, and parked near the Respondent’s property fence about 65 feet away from the gathered workers. (Tr. 324, 694–695.)

45 After Braatz had been at the intersection for approximately 15–20 minutes, about 100 of his coworkers left the rally using the crosswalk button to cross Logan Avenue. (Tr. 324–325.) Braatz has used this intersection in the past and has made it across the street before the crosswalk light turns red. (Tr. 327.) After observing his co-workers cross Logan Avenue, Braatz returned back to his building. (Tr. 324.)

Security guard Torgude testified that he took photos of workers at this intersection for “[s]afety issues, safety concerns” because a lot of people were crossing the intersection and not making it across before the walk/don’t walk signal changed to “don’t walk.” (Tr. 686, 688, 690, 692; GC Exhs. 25 and 28.) Torgude also reported this to the City of Renton after the incident. (Tr. 693.) While the photos taken by Torgude were not of individual marchers, the faces of various marchers in most of the photos are clear enough to identify individual SPEEA employee marchers. (GC Exhs. 25 and 28.)

Approximately 12,000–13,000 employees work the day shift at the Renton plant. (Tr. 697.) When day shift employees get off work at the plant, many cross over Logan Avenue to head down to the section 11 parking area across from Renton stadium. (Tr. 696–697; GC Exh. 13.) Often, workers do not make it across Logan Avenue before the stoplight or the walk/don’t walk sign changes. (Tr. 697.) Guard Torgude has notified the City of Renton several times with respect to traffic safety issues in connection with employees getting off shift. (Tr. 697–698.) Respondent’s security guards have not taken photographs of employees under such common circumstances prior to the rally on September 26. (Tr. 698.)

(c) The October 3 surveillance in building 85–001 at Respondent’s Portland, Oregon Facility

The first red-shirt march conducted by the Engineers’ Union at Respondent’s Portland, Oregon facility took place on October 3 and was organized by employee Kenneth Parcher (Parcher). (Tr. 662.) Before the October 3 march, the Portland security guards were instructed by Respondent about what to do if there were any “demonstrations” in Portland. (GC Exh. 24.) The instructions do not mention a single incident of disruption or safety violations in describing what had occurred at other Respondent facilities. *Id.* In addition, the instructions provide: “If there is a demonstration please let me know and have the patrol respond to the event, take photos of those involved in the event, ensure participants are acting in a safe manner and clearly document the event in USIR before the end of your shift.” *Id.*

On October 3, approximately 45–50 employees gathered at about 11:15 a.m. at the flag pole area on the north side of the Portland facility to participate in the march. (Tr. 339.) The majority of employees were wearing red Engineers’ Union shirts. (Tr. 340.) A few held poster-sized union signs which said, “Respect SPEEA to the Max.” *Id.*

On September 5, Security Site Manager Don Collins (Collins) sent an email to Portland facility guards indicating that Engineers’ Union activity was likely to increase in the coming weeks and to ensure that guards documented any Union demonstrations with USIR and photographs at the facility. (Tr. 665, 677; GC Exh. 24.) When the march began, Collins instructed guard Ed Crowe (Crowe) to be in front of the walk and to have a uniformed guard follow the walk. (Tr. 665, 677.)

After gathering at the flag pole, employees walked through the office hallways and through the production areas of the three main buildings of the Portland facility —buildings 85-120, 85-001, and 85–105.<sup>13</sup> Engineers’ Union members did not chant nor use noisemakers and there were no derogatory signs used by the marchers during the October 3 Portland walk. (Tr. 679; GC Exh. 33.)

After Engineers’ Union members marched through the Portland factory area in the 85-001 building, they went to a training area in front of the building, and Parcher observed guard Crowe filming the employees walking past him either single file or in pairs using a digital camera. (Tr. 346, 679.) Parcher was approximately 20 feet away from Crowe when he first noticed him filming the walkers. Crowe continued to film employees as they passed right by him. (Tr. 346, 668.) Employees were not chanting, blocking workers, or preventing work from being performed. (Tr. 356–347.)

The marchers continued down the front of building 85–001, went inside the cafeteria, continued along to the front of the building and re-entered the building through the main entrance and proceeded down the main hallway. (Tr. 347.) Immediately after the marchers re-entered the building through the main entrance, Crowe was right there taking photos of the marchers. (Tr. 347, 668; GC Exh. 26.) This time, Crowe was taking photos within 5 feet of the marchers despite the fact that they were not chanting, making noise, or preventing work from being completed. (Tr. 348, 675.) After exiting the 85–001 building, the marchers walked through the 85–105 building. (Tr. 349–350.)

On October 4, Crowe filed an incident report of the October 3 march that describes the march as lasting approximately 40 minutes and not being disruptive to the non-march work force as the march was quiet with no chants, whistles, or horns. (GC Exh. 33.) The report also indicates that photos and video were taken of the October 3 march. *Id.* While the photos taken by Crowe were not of individual marchers, the faces of various marchers in most of the photos are clear enough to identify individual SPEEA employee marchers. (GC Exh. 33.)

## 2. Rule PRO 2783

Respondent attempts to regulate camera use on its properties to protect information from disclosure to third parties. (Tr. 383–384.) The use of camera-enabled devices in classified

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<sup>13</sup> Respondent’s counsel argues in fn. 16 of its closing brief that it was error for me to disallow Respondent the opportunity to introduce additional evidence of Respondent’s surveillance in the Portland Building 85–001 *factory floor* area, an area that General Counsel had no prior evidence of surveillance before hearing. This case involves, among other things, allegations of Respondent’s illegal surveillance of SPEEA employees in the Portland building 85–001 *office* area. A review of the hearing transcript at pp. 659–661 shows that Respondent was given ample opportunity to present new evidence of Respondent’s filming in the building 85–001 *factory floor* area in exchange for General Counsel amending the complaint to add more surveillance allegations but Respondent’s counsel, instead, elected to forego adding further surveillance to this case and, therefore, waived its opportunity to add evidence of additional filming in the *factory floor* area.

areas at Respondent's facilities is prohibited outright and these classified areas are designated by signage, locks, and warning signs.<sup>14</sup> (Tr. 386, 428.) Respondent also physically designates its proprietary and less sensitive than classified areas at its Everett facility by placing it behind locked doors or with signage and either curtains, fences or theatre tape. (Tr. 428–429.)

5

Respondent has a working procedure/rule, PRO 2783, known by its employees, that precludes the use of personal camera-enabled devices without a valid business need and a preapproved Camera Permit from Respondent. (Tr. 183; GC Exh. 8.) This rule was last revised to its current restricted language in November 2011. Specifically, the rule provides:

10

A. Possession of the following camera-enabled devices is permitted on all company property and locations except as restricted by government regulation, contract requirements or by increased local security requirements.

15

However, **use** of these devices to capture images or video is prohibited without a valid business need and an approved Camera Permit that has been reviewed and approved by Security: [list of devices omitted]. *Id.* [Emphasis in original.]

The definition of business need is:

20

Business need: In relation to the use of a photographic or imaging device, a business need is a determination made by the authorizing manager that images or video are needed for a contractual requirement, training, technical manuals, advertising, technical analysis, or other purpose that provides a positive benefit to the company. *Id.*

25

PRO 2783 applies to the two main divisions of Respondent: Boeing Commercial Airplanes (BCA) and Boeing Defense Based Group (BDS). (Tr. 378.) Moriarty explained that she was given express permission by Respondent and allowed to take photos while on a VIP tour at the Everett facility with her own photo-enabled device that were not reviewed at the conclusion of the tour. (Tr. 279–282.) Respondent's director of 777 operations opined that typically no outside visitor on a VIP tour who takes photos at Respondent would have their cameras or cellphones seized for taking improper photos and he did not recall any incident where a VIP visitor had their camera or cellphone seized for taking an improper photo. (Tr. 646.) Instead, Respondent just hopes for cooperation from the VIP tour individuals in sharing photographs of the inside Everett facility they take with Respondent. *Id.*

35

Respondent's Exhibit 5 is a dvd or video it produced for public consumption showing the 18–19 days of the manufacturing process or moving final assembly line of its 777 airplanes over a lengthy period of time at the Everett facility. (Tr. 593, 598, 646.) Respondent also has a continuing policy known as PRO-3439 relating to disclosure of information outside the company. (GC Exh. 36.) This policy specifically provides, among other things:

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Nothing in this procedure should be construed as preventing employees from:

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<sup>14</sup> This case does not involve any allegation that photos were taken in Respondent's classified areas.

1. Discussing or releasing information about wages, hours, working conditions, or other terms and conditions of employment to the extent privileged by Section 7 of the National Labor Relations Act or other law ....  
Id.

5

## ANALYSIS

### I. CREDIBILITY

10

I have outlined my credibility findings in the findings of fact above and in the analysis below. As a general matter, however, in significant instances, reliable documentary evidence fails to support accounts provided by Respondent’s key witnesses which weighs against such accounts being credible. Evidence contradicting the findings, particularly testimony from  
15 Madison, Smith, Harris, and Lopez, has been considered but has not been credited except to the extent it is consistent with more reliable witness testimony. For example, the general theme of Respondent’s defense of the alleged Act violations here is that its questioned rules were put in place: (1) due to Respondent’s “reasonable” concerns with trespassing and safety issues related to each of the four Engineers’ Union marches discussed in this decision; and (2) to protect its  
20 valuable manufacturing process from competitive or terrorist outsiders with its anti-camera-device rule PRO 2783.

25

I find that the convincing testimony from Respondent’s security guards Catalini and Lopez as well as their USIR reports and the largely undisputed testimony at hearing from the  
25 eight Engineers’ Union members provides strong evidence that Respondent’s employees regularly veer outside Respondent’s internal safety rules without discipline on a daily basis. These include frequent examples of not wearing safety glasses in the Everett factory facility or walking outside the pedestrian walkways into the transportation aisles or walking outside on  
30 the Everett factory apron through large overhead doors or walking across Logan Avenue outside the Renton facility to get to their parked cars after work before the stoplight warning light changes. No evidence was submitted that showed that any of these alleged employee infractions led to any form of discipline by Respondent before or after any of the Engineers’  
35 Union marches in 2012. Therefore I reject Respondent’s alleged safety concerns to justify its questioned conduct here as it is contradicted by its actions, the documentary evidence and Engineers’ Union members’ testimony. Had these alleged safety infractions been real and  
enough to provide Respondent with solid justification for its photographing or videotaping, one would expect employee citations or some form of discipline taken to correct such unsafe  
conduct. In fact, there is no evidence that the security guards who escorted the marchers  
40 instructed them at any time to comply with Respondent’s safety rules had they actually been in violation. I also reject Respondent’s argument that individual participants cannot be identified in the photos taken of the solidarity marches.

45

In addition, I reject Respondent’s allegation that its questioned conduct was justified due to the disruptive nature of the marches because the evidence shows that each of the four  
45 marches were not disruptive and Respondent maintained its production schedule with only its own security guards receiving Respondent’s instructions to stop traffic during marches. For example, Clark, Respondent’s director of manufacturing and operations of the 777 airplane,

was very candid and believable when he opined that the brief pause in work from the December 12 march and even a 20-minute pause in work did not delay the delivery date of any of the aircraft. (Tr. 563, 605, 642.)

5 I also find the eight Engineers' Union employees' testimony particularly credible over  
Respondent's manager witnesses' testimony given the fact that each of the eight nonsupervisor  
engineer employees testified against their own interests as they were employed at Respondent  
at the time of trial and must continue to face Respondent's management after trial. See *S.E.*  
10 *Nichols, Inc.*, 284 NLRB 556 fn. 2 (1987) (Current respondent employee's testimony more  
reliable because it is given against his interest to remain employed by Respondent.).

As to the credibility of Moriarty, Hastings, and Lopez with respect to their  
conversations on December 12 when Lopez was approached while in his vehicle as the  
15 Engineers' march was ending, I credit Moriarty and Hastings versions of what Lopez said over  
his own blunted testimony. Moriarty and Hastings were more convincing witnesses as their  
demeanors were confident and their versions of events having Lopez omit any reference that he  
was taking photos to ensure compliance with safety standards or to document safety concerns  
or violations were more believable and consistent with the documentary evidence in this case.  
This includes the USIR of Lopez which is silent with respect to engaging verbally with  
20 employees or otherwise directing traffic as it indicates that he merely observed Engineers'  
Union employees and photographed them. (Tr. 240, 303; GC Exh. 32.) As per the guards, the  
purpose of their photographing the walk was to show the scope of the crowd size for the first  
Engineers' Union walk at the facility. (Tr. 451, 473, 480, 538.) Even Catalini testified that  
before the September 19 march he and Lopez were instructed by Hess to document the scope  
25 and size of the crowd, any intimidating factors with no reference to any safety concerns. (Tr.  
480, 538.)

Moreover, Respondent produced a video (R. Exh. 5), for public distribution that shows  
the very manufacturing process that Respondent at hearing argued needs protection from  
30 outsiders with its rule PRO 2783. While Respondent does get involved in top secret military  
and other highly confidential matters, those designated areas are not at issue here as  
Respondent argues that its manufacturing process at the Everett factory floor facility is highly  
confidential though as stated above, its video showing the very same process over many days'  
time is a public video and Respondent conducts VIP tours to foreign and local employers  
35 without the same concern for privacy it has toward its Engineers' Union member employees. I  
further find that any concern for plant or worker safety is noticeably absent from the security  
guard reports with respect to the Everett and Portland marches and only passing reference is  
made to a safety concern outside its facility in the Renton march report though, once again, no  
employees were cited for trespassing or any other safety or work rule violation. Respondent's  
40 defense here appears to have been created after the marches at issue. Therefore, I do not find  
that Respondent's general theme of the case credible as it is greatly outweighed by the several  
Engineers' Union members' testimony and its own internal reports.

## 45 II. Respondent's Surveillance Rule to Photograph or Video Engineers' Union Marchers

The General Counsel alleges in paragraphs 7(a), 7(c), 7(d), 9, 12, and 14 of the  
complaint that, on September 19 and December 12 in and around Respondent's Everett factory

facility, September 26 near gate D-9 at the Renton facility, and October 3 in building 85–001 at its Portland facility, Respondent, by its security guards engaged in surveillance of the Engineers’ Union and/or protected, concerted activities in violation of Section 8(a)(1) of the Act.

5

The fundamental principles governing employer surveillance by photographing or videotaping of protected employee activity remain unchanged as set forth in *F. W. Woolworth Co.*, 310 NLRB 1197 (1993), as follows:

10

. . . [A]n employer’s mere observation of open, public union activity on or near its property does not constitute unlawful surveillance. Photographing and videotaping such activity clearly constitute more than mere observation, however, because such pictorial record keeping tends to create fear among employees of future reprisals. The Board in *Woolworth* reaffirmed the principle that photographing in the mere belief that something might happen does not justify the employer’s conduct to interfere with employees’ right to engage in concerted activity . . . . Rather, the Board requires an employer engaging in such photographing or videotaping to demonstrate that it had a reasonable basis to have anticipated misconduct by the employees. “[T]he Board may properly require a company to provide a solid justification for its resort to anticipatory photographing . . . . The inquiry is whether the photographing or videotaping has a reasonable tendency to interfere with protected activity under the circumstances in each case. [Citations omitted.]”

15

20

*National Steel & Shipbuilding Co.*, 324 NLRB 499 (1997), *enfd.* 156 F.3d 1268 (D.C. Cir. 1998). Therefore, Respondent must show that it had a reasonable, objective basis for anticipatory misconduct before its photography or videotape of any Engineers’ Union march is allowed. Furthermore, *F. W. Woolworth Co.*, *supra* at 1197, held that the mere taking of photos of protected activity is inherently intimidating and that taking photos just to stick them in a file as seems to be Respondent’s policy here is not solid legal justification.

30

Respondent argues that an employer’s photography of employees engaged in a peaceful demonstration does not constitute *per se* unlawful surveillance in violation of Section 8(a)(1) of the Act and cites as authority the case *U.S. Steel Corp. v. NLRB*, 682 F.2d 98, 101 (3d Cir. 1982.) However, I am not bound by the Third Circuit Court of Appeal’s decision in *U.S. Steel Corp.* I am bound to follow Board precedent that has not been reversed by the Supreme Court or the Board itself. See *Pathmark Stores*, 342 NLRB 378 fn. 1 (2004). As such, I find that General Counsel does not have the burden to show that Respondent’s photographing or videotaping of Engineers’ Union marches caused actual interference, restraint, or coercion of employees’ exercise of their Section 7 rights under the Act.

40

Respondent further argues that its photographing and videotaping of Engineers’ Union marches in late 2012 were lawful “because [Respondent’s] attempts to document disruptive and unsafe SPEEA marches were based on legitimate and substantial safety and business disruption concerns.” (R.Br. at 28–32.) Respondent adds that its prior history with Machinists’ Union marches justified its questionable conduct here along with the Engineers’ Union members’ actual disruption and workplace safety violations. *Id.*

45

I reject Respondent’s argument that the larger Machinists’ Union marches are relevant to this case as I find that they are too remote in time and represent actions by an entirely different group of employees represented by a different union under different circumstances. While no evidence of violence or trespassing was tied to Machinists’ Union marches either, Respondent’s smaller professional Engineers’ Union members’ conduct does not provide a solid justification for Respondent’s resort to anticipatory photographing and the Engineers’ Union should not be held accountable for an entirely different union members’ conduct that occurred more than 4 years earlier under different circumstances.

In addition, as stated above, there were no actual incidents of trespass or violence cited against any Engineers’ Union employee to provide solid justification for the questioned photography or videotaping. There were no reports of unsafe behavior that Respondent had not seen before any of the four marches at issue in this case during regular workdays when no Engineers’ Union marches occurred. Significantly, not any of the marchers were disciplined for any safety violations during any of the four marches. No evidence was presented showing photographs of Respondent’s employees behaving in the same manner as when they marched. If photography of the same alleged unsafe conduct does not exist *before* the march (though credible evidence shows this behavior to be the same) then what is different about Respondent’s employees’ behavior on the questioned dates of the marches – only the fact that the Engineers’ Union employees are marching. This alone is not solid justification to photograph or videotape these employees. Moreover, Respondent provided the marchers with security guard escorts in the front and back of the marchers and the guards also stopped vehicular traffic around the marchers thereby improving safety conditions during marches.

Respondent’s photographing and videotaping of Engineers’ Union members marching prevented employees who desired to march anonymously from doing so. Consistent with Board precedent, I find that Respondent’s deviation from Respondent’s regular custom and practice of *not* photographing, videotaping, or citing or disciplining its employees’ very same non-citable behavior was not legitimate. This conduct that occurred before and after the late 2012 marches includes not wearing safety goggles, walking outside of pedestrian walkways and congregating at Respondent’s third party-run Tully’s Coffee Shop during breaks, walking onto Respondent’s outside apron and under large overhead doors, and walking across crosswalks outside the facility and Respondent’s property after warning lights have changed. I find that photographing and videotaping this same noncitable conduct *only* during Engineers’ Union marches protected under Section 7 of the Act where no incidents of trespass or violence were recorded violates Section 8(a)(1) of the Act.

Also, Respondent’s argument that the photography was justified due to the disruption of Respondent’s manufacturing process caused by the marches is again false. None of the USIRs note any interference with production. Specifically, the USIR tied to the October 3 Portland Engineers’ Union march expressly states that there was no interference. (GC Exh. 34.) As stated above, Respondent’s director of manufacturing and operations convincingly opined that the brief pause in work caused by the Engineers’ Union marches and even all of the marches combined did not delay the delivery date of any of the aircraft in Everett. (Tr. 563, 605, 642.) Furthermore, the September 26 solidarity walk was an ice cream social held *outside* the Renton facility which obviously did not cause any production disruption inside the facility where work is performed.

Respondent cites *Washington Fruit & Produce Co.*, 343 NLRB 1215, 1217–1218 (2004), for its argument that it had a reasonable basis to suspect anticipatory misconduct on the part of the Engineers’ Union members during each of the four marches to warrant its photography and videotaping of the protected concerted activities. I find that *Washington Fruit & Produce Co.* is distinguishable from the facts in this case because there the respondent’s safety concerns were legitimate and the majority of 100 marchers in *Washington Fruit & Produce* included complete strangers who were not respondent’s employees and at the time the decision to videotape was made the deciding official knew that the union was planning a high profile event with its own out-of-state union officials and that there had been previous trespassing on respondent’s property that led respondent to contact the police for help a second time that day. The Board found respondent’s videotaping lawful given these unique facts and the prior incidents of trespassing on respondent’s property and further finding that taking photographs or videotaping to document trespassory activities for the purpose of making a claim of trespass is lawful. *Id.*

Consequently, for the reasons stated herein, I find that photographing and videotaping the four Engineers’ Union marches in late 2012 was not reasonably based on solid justification and each instance violates Section 8(a)(1) of the Act.

### III. Security Guard Lopez’ December 12 Conversations with Engineers’ Members Moriarty and Hastings

The General Counsel alleges in paragraphs 10, 1, and 14 of the complaint that, on December 12, 2012, Respondent, by Lopez, at the Everett factory facility, created an impression among its employees that their union and/or protected, concerted activities were under surveillance in violation of Section 8(a)(1) of the Act.

The test for determining whether an employer has created an impression that its employees’ protected activities have been placed under surveillance is “whether the employees would reasonably assume from the employer’s statements or conduct that their protected activities had been placed under surveillance.” *Greater Omaha Packing Co.*, 360 NLRB No. 62, slip op. at 3 (2014); *Rood Industries*, 278 NLRB 160, 164 (1986). When an employer tells employees that it is aware of their protected activities, but fails to tell them the source of that information, it violates Section 8(a)(1) “because employees are left to speculate as to how the employer obtained the information, causing them reasonably to conclude the information was obtained through employer monitoring.” *Id.*

Here, the Engineers’ Union did not advise Respondent ahead of its December 12 march that a march would occur at the Everett facility that day. The march began at approximately 11 a.m. at the Tully’s location and security guards Hess and Lopez were dispatched to control traffic for the march after a guard reported employees wearing red Engineers’ Union shirts gathering in the factory at Tully’s. (Tr. 222, 283, 504.)

Engineers’ Union members observed Guard Lopez sitting in his security vehicle in the main transportation aisle at the intersection closest to the Tully’s in the factory building on

December 12. (Tr. 230. GC Exh. 3; GC Exh. 11.) At this time, Lopez engaged in two short conversations with two employees – Moriarty and Hastings. When Moriarty approached Lopez parked in his vehicle, she stated: “I noticed you were taking photographs of our group.” (Tr. 231.) Lopez responded: “I’ve been directed to document all union activities.” Id. Lopez admitted the same with his testimony. (Tr. 509.) Moriarty replied: “It makes our folks feel a bit uncomfortable.” Id. Moriarty further reported that Lopez did not tell her he was taking photos to ensure compliance with safety or to document traffic or safety concerns and he clearly indicated to her that he would continue to document and take photos to document in his report that 250 individuals participated in the walk. (Tr. 231, 523.) Lopez’ USIR provides that 200–250 SPEEA members participated in the march. (GC Exh. 34.)

As their discussion was ending, Engineers’ Union member Hastings approached Lopez and Moriarty and began to speak with Lopez as Moriarty left the group. (Tr. 232–233.) Hastings asked Lopez twice what he was doing with his camera and each time he replied that he was taking photos of non-Boeing activity. (Tr. 288.) Hastings then asked Lopez why he was taking these photos and he responded by saying: “We always do this [photo taking].” Id. No testimony was presented that during their conversation Lopez told Hastings that he was taking photos to ensure compliance with safety standards or to document safety concerns or violations. (Tr. 289.) At the end of these conversations, the march was winding down and there were approximately 15 marchers remaining leaving the pedestrian aisle and not blocking any vehicular or pedestrian traffic or interfering with plant operations. (Tr. 288–289.)

Both Moriarty and Hastings opined that neither Lopez nor any other guards directed vehicular or pedestrian traffic during the march and Lopez’ report is silent with respect to engaging verbally with employees as it indicates that he merely observed Engineers’ Union employees and photographed them. (Tr. 240, 303; GC Exh. 32.)

In determining whether an employer has unlawfully created the impression of surveillance of employees’ union activities, the test is whether under all the relevant circumstances, reasonable employees would assume from the statement in question that their union or other protected activities had been placed under surveillance. *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1276 (2005). The essential focus has always been on the *reasonableness* of the employees’ assumption that the employer was monitoring their union or protected activities. Id. As with all conduct alleged to violate Section 8(a)(1), the critical element of reasonableness is analyzed under an objective standard. Id.

I find that the Lopez’ activities taking photographs of the December 12 march at various times and parked in his vehicle solely to document Engineers’ Union activities without any further explanation and the Respondent did not explain to the workers or put forth any credible evidence at trial that explained that why it was taking photos of the December 12 march. Therefore, Lopez’ statements to Moriarty and Hastings on December 12 that he’d been directed to document all union activities and that he was taking photos of non-Boeing activity reasonably suggested to the two SPEEA employees that the Respondent was closely monitoring the degree and extent of their protected concerted march and other activities. See *Emerson Electric Co.*, 287 NLRB 1065 (1988). Stated differently, I find that Lopez’ statements and conduct on December 12 before Moriarty and Hastings would reasonably cause them to assume that their protected activities had been placed under surveillance. Consequently, I find that

Lopez’ statements to Moriarty and Hastings on December 12 created the impression that the Engineers’ Union activities were under surveillance and violated Section 8(a)(1) of the Act.

5 IV. Respondent’s Rule PRO 2783 Regulating Employees’ Personal Camera Picture-Taking  
or Video-Taking Without a Business Need and Permit

10 The General Counsel alleges in paragraphs 6, 12, and 14 of the complaint that, on November 11, 2011, Respondent promulgated and since then has maintained its rule PRO 2783 to discourage its employees from forming, joining, and/or assisting the Union and/or engaging in other protected concerted activities in violation of Section 8(a)(1) of the Act.

15 When evaluating whether a rule violates Section 8(a)(1), the Board applies the test set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). See *U-Haul Co. of California*, 347 NLRB 375, 377 (2006), enfd. 255 Fed.Appx. 527 (D.C. Cir. 2007). Under *Lutheran Heritage*, the first inquiry is whether the rule explicitly restricts activities protected by Section 7. If it does, the rule is unlawful. If it does not, “the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.” *Lutheran Heritage* at 647.

20 Board law is settled that ambiguous employer rules—rules that reasonably could be read to have a coercive meaning – are construed against the employer. “This principle follows from the Act’s goal of preventing employees from being chilled in the exercise of their Section 7 rights—whether or not that is the intent of the employer – instead of waiting until the chill is manifest, when the Board must undertake the difficult task of dispelling it.” *Flex Frac Logistics, LLC*, 358 NLRB No. 127, slip op. at 2 (2012).

30 Respondent argues that its rule PRO 2783 is necessary to protect the valid business need of protecting its valuable manufacturing process. I find Respondent’s argument non-credible based on its contrary practice of allowing free access to its manufacturing process both in the form of its dvd referenced herein which has been placed by Respondent in the public domain and its VIP tours that allow unfettered photography to the general public. I find that Respondent’s manufacturing process is no more in need of protection than an automobile assembly line. See Tr. 646; R. Exh. 5 (Respondent’s airplane assembly line process in the public domain.) Respondent has adequate protection for keeping its top secret and truly confidential military and commercial information and processes protected behind closed doors with heightened security clearance. Its argument at hearing that the rule is needed to protect Respondent’s competitive advantage and as a security matter is a mere smokescreen as its professed business purpose for the rule is eviscerated by its actual practice which allows public access to its Everett factory manufacturing process. As referenced above, Respondent disseminates its manufacturing process to the general public in the form of its dvd. (Tr. 646; R. Exh. 5.) In addition, Respondent admits that it allows non-Boeing outside foreign and domestic visitors to take photos of the Everett facility without showing a similar business need or permit. (Tr. 245, 269–272.)

45 As stated above under *Lutheran Heritage Village-Livonia*, 343 NLRB at 646, “an employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill

employees in the exercise of their Section 7 rights.” Respondent maintains its rule PRO 2783 that precludes the use of personal camera-enabled devices without a valid business need, defined to include a “purpose that provides a positive benefit to the company [Respondent] . . .” and a preapproved Camera Permit from Respondent without an exemption for activity protected by the Act. (Tr. 183; GC Exh. 8; GC Exh. 36.)

Here, Respondent is not using its rule PRO 2783 to protect the “weighty” privacy interests of hospital patients thereby distinguishing the facts in this case from those involved in *Flagstaff Medical Center*, 357 NLRB No. 65, slip op. at 4–5 (2011). (R. Br.39–40.) Instead, Respondent’s rule is better analyzed in the context of other recent cases.

In *Hills & Dales General Hospital*, 360 NLRB No. 70, slip op. at 1–2 (2014), the Board found as overly broad and ambiguous, a requirement that employees represent the Respondent “in the community in a positive and professional manner in every opportunity.” The Board found that this requirement violated Section 8(a)(1) of the Act and could “discourage employees from engaging in protected public protests of unfair labor practices, or from making statements to third parties protesting their terms and conditions of employment –activity that may not be ‘positive’ towards the Respondent but is clearly protected by Section 7. [citations omitted]” Id. The same thing can be said of Respondent’s rule in this case requiring a “purpose that provides a positive benefit to the company [Respondent] . . .” as an employee could reasonably believe that photographing protected concerted activity would not be viewed by management as providing a positive benefit to Respondent. (See GC Exh. 8.) I find that Respondent’s rule PRO 2783 reasonably discourages its employees from taking photos of protected concerted activities such as their solidarity marching during a lunch break during successor CBA negotiations or photographing an unsafe condition at work.

Moreover, the requirement that employees request and receive permission and a permit in order to find out if their Section 7 photo activity will be permitted is adverse to the Act. See *J. W. Marriot*, 359 NLRB No. 8 (21012) (Manager’s absolute discretion over application of rule is unlawful because it requires management permission to engage in Section 7 activity and leads employees to reasonably conclude that they are required to disclose to management the nature of the activity for which they seek permission, a compelled disclosure that would certainly tend to chill the exercise of Sec. 7 rights.) Here, I find that Respondent’s employees would reasonably construe the rule as prohibiting all photography in Respondent’s factory facilities including photography performed in concert of Engineers’ Union solidarity marches during successor CBA negotiations or of other protected concerted activities. As such, I further find that Respondent’s facially overly broad and ambiguous rule PRO 2783 would reasonably tend to chill employees in the exercise of their Section 7 rights and that an employee would reasonably construe the language to prohibit Section 7 activity. Consequently, I find that rule PRO 2783 violates Section 8(a)(1) of the Act.<sup>15</sup>

<sup>15</sup> Respondent could have avoided a violation by including a caveat like it has in its Rule PRO-3439, referenced above, that its rule PRO-2783 does not apply to conduct protected by the Act. See generally *Costco Wholesale Corp.*, 358 NLRB No. 106 (2012) (finding unlawful the maintenance of a rule prohibiting statements posted electronically that “damage the Company . . . or damage any person’s reputation”). As indicated above, Respondent uses this caveat in

### CONCLUSIONS OF LAW

- 5           1. The Respondent is an employer engaged in commerce within the meaning of  
Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Security Guards Hess, Lopez, and Catalini are agents within the meaning of Section  
2(13) of the Act.
4. Respondent engaged in conduct in violation of Section 8(a)(1) of the Act:
- 10           (a) By surveilling employees on September 19, 2012 at the Everett factory facility.
- (b) By surveilling employees on December 12, 2012 at the Everett factory facility.
- (c) By surveilling employees on September 26, 2012 near gate D-9 at Respondent’s  
Renton facility.
- (d) By surveilling employees on October 3, 2012 in building 85–001 at Respondent’s  
15           Portland, Oregon facility.
- (e) By creating an impression of surveillance of employees’ union activities on  
December 12, 2012.
5. These unfair labor practices affect commerce within the meaning of Section 2(6) and  
20           (7) of the Act.
6. The above violations are unfair labor practices within the meaning of the Act.

### REMEDY

25           Having found that the Respondent has engaged in certain unfair labor practices, I find  
that it must be ordered to cease and desist from engaging in such conduct in the future and to  
take certain affirmative action designed to effectuate the policies of the Act. To remedy the  
Respondent’s violations of Section 8(a)(1) of the Act, I shall recommend that the Respondent  
post and abide by the attached notice to employees.

30           On these findings of fact and conclusions of law and on the entire record, I issue the  
following recommended<sup>16</sup>

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other rules such as its continuing policy known as PRO-3439 relating to disclosure of  
information outside the company. See GC Exh. 36.

<sup>16</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and  
Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec.

**ORDER**

5 The Respondent, The Boeing Company, Renton and Everett, Washington, Portland,  
Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

10 (a) Photographing and videotaping employees engaged in workplace marches and  
rallies and/or near its property.

(b) Creating the impression that its employees' union and/or protected concerted  
activities are under surveillance.

15 (c) In any like or related manner interfering with, restraining, or coercing employees  
in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

20 (a) Within 14 days of the Board's Order, to the extent it has not already done so,  
revise or rescind rule PRO 2738 so that it does not restrict Section 7 rights and allows  
employees to use their personal camera enabled device in non-restricted areas.

25 (b) Within 14 days of the Board's Order, to the extent it has not already done so,  
rescind all policies and procedures requiring security and/or management personnel to  
photograph or videotape employees engaged in workplace marches and rallies and/or near its  
property.

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102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed  
waived for all purposes.

(c) Within 14 days after service by the Region, post copies of the attached notice marked “Appendix A at its Everett and Renton, Washington facilities and its Portland, Oregon facility.”<sup>17</sup> Copies of the notices, on forms provided by the Regional Director for Region 19, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities where posting is required, the Respondent shall duplicate and mail, at its own expense, a copy of the notices to all current employees and former employees employed at those facilities at any time since September 19, 2012.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., May 15, 2014

\_\_\_\_\_  
Gerald M. Etchingham  
Administrative Law Judge

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<sup>17</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

**APPENDIX A**

**NOTICE TO EMPLOYEES**

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT photograph or videotape employees engaged in workplace marches and rallies and/or near its property.

WE WILL NOT watch, photograph or videotape you in order to find out about your union activities.

WE WILL NOT create an impression that we are watching your union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days of the Board's Order, to the extent we have not already done so, revise or rescind PRO 2738 so that it does not restrict Section 7 rights and allows employees to use their personal camera enabled device in non-restricted areas.

WE WILL, within 14 days of the Board's Order, to the extent we have not already done so, rescind all policies and procedures requiring security and/or management personnel to photograph or videotape employees engaged in workplace marches and rallies and/or near its property.

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THE BOEING COMPANY

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078  
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/19-CA-090932](http://www.nlr.gov/case/19-CA-090932) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.