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August 18, 2015

**Via NLRB E-File**

Gary Shinnors  
Executive Secretary  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

**Re: The Boeing Company  
NLRB Case No. 19-CA-093656**

Dear Mr. Shinnors:

The Boeing Company submits supplemental authority in support of Exception No. 37 to the decision of the Administrative Law Judge issued on July 31, 2014 in the above-captioned case. In *SW General, Inc. v. NLRB*, -- F.3d --, 2015 WL 4666487 (D.C. Cir. Aug. 7, 2015), the Court of Appeals, District of Columbia Circuit held that a complaint issued by the improperly appointed Acting General Counsel must be dismissed. Specifically, the D.C. Circuit held that Solomon's appointment to Acting General Counsel under the Federal Vacancies Reform Act ("FVRA") was invalid from January 5, 2011 until November 4, 2013, and that the FVRA violation was not harmless. Because the Complaint in the instant case was also issued during the Acting General Counsel's improper appointment, this case should also be dismissed.

Exception No. 37 is based on "[t]he Administrative Law Judge's failure to find that the issuance of the Complaint against Boeing was unauthorized and void." (Exception No. 37). Boeing cited *Hooks v. Kitsap Tenant Support Servs., Inc.*, C13-5470 BHS, 2013 WL 4094344, at \*1-2 (W.D. Wash. Aug. 13, 2013), in its brief (p. 2, n.1) in support of that exception. In *Hooks*, the court held that Acting General Counsel Lafe Solomon's appointment was invalid pursuant to the Federal Vacancies Reform Act ("FVRA"), 5 U.S.C. § 3345, *et seq. Id.* at \*2.

Here, the original Complaint was issued on March 29, 2013, and was superseded by the issuance of the Consolidated Complaint on April 29, 2013, during the period in which the FVRA precluded Solomon from serving as the Acting General Counsel. Like the FVRA violation in *SW General*, the FVRA violation here is not harmless and the issuance of the Board's order will not serve to ratify it because of the

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Executive Secretary  
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prosecutorial discretion given to the General Counsel's office. Accordingly, the issuance of both the original Complaint on March 29, 2013 and the Consolidated Complaint on April 29, 2013 was not harmless error and cannot be ratified by a Board order. Therefore, the Board must reverse the Administrative Law Judge's Decision and dismiss Case No. 19-CA-093656 in its entirety.

Very truly yours,

/s/ Richard B. Hankins

cc: Anastasia Hermosillo, Esq. (via email)  
Thomas Buescher, Esq. (via email)