

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

THE BOEING COMPANY

and

Case 19-CA-128941

**SOCIETY OF PROFESSIONAL ENGINEERING
EMPLOYEES IN AEROSPACE, affiliated with
INTERNATIONAL FEDERATION OF
PROFESSIONAL & TECHNICAL ENGINEERS,
Local 2001, AFL-CIO**

**COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF
TO RESPONDENT'S ANSWERING BRIEF**

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Pursuant to § 102.46(3)(h) of the Rules and Regulations of the National Labor Relations Board (Board), Counsel for the General Counsel (General Counsel) submits this Reply Brief to The Boeing Company's (Boeing or Respondent) Answering Brief to the Cross-Exceptions filed by the Society of Professional Engineering Employees in Aerospace (SPEEA or Charging Party) to the July 14, 2015 decision of Administrative Law Judge Dickie Montemayor (ALJ) in the above captioned case.¹ [JD (SF)-26-15] (ALJD or Decision).

In its Cross-Exceptions, Charging Party asserts that the ALJ should have ordered Respondent to post physical (hard copy) notices at all locations covered by the collective bargaining agreement. Respondent disputes this assertion in its Answering Brief. As SPEEA's contention is well supported by long-existing Board precedent as well as Boeing's own history, its Cross-Exceptions should be granted and Respondent's opposition rejected in its entirety.

1) Citing *J & R Flooring, Inc. (J. Picini Flooring)*, 356 NLRB No. 9 (2010), Boeing argues, in essence, that since the Board is moving into the electronic age, electronic posting of notices suffices. Boeing brief at 2. Respondent is seriously mistaken.

There is much to be said about employees viewing a physical posting on bulletin boards and other areas where an employer communicates with its employees. Not only are employees informed in the notice of the steps and promises its recalcitrant employer must take to remedy its unfair labor practice conduct and avoid future violations, but

¹ References to the decision of the ALJ are designated (ALJD __-__-__) indicating the appropriate page and line(s), respectively. References to the official transcript are designated (__-__) indicating the appropriate page and line(s), respectively. References to Exhibits of General Counsel, SPEEA, and Respondent are designated (GC Ex. __), (SPEEA Ex. __), and (Boeing Ex. __), respectively.

seeing the posting for 60 days also reinforces in the minds of each employee on a daily basis the fact that they have rights under the National Labor Relations Act and the Board will protect their free exercise of those rights. Moreover, having to conspicuously post a notice to employees is also a recognized significant sanction. *Hoffman Plastic Compounds, Inc., v. NLRB*, 535 U.S. 137, 152 (2002). It is for these reasons that the physical posting of remedial notices has been part of Board remedies since day one. See, e.g., *Pennsylvania Greyhound Lines, Inc.*, 1 NLRB 1, 52 (1935) (employer required to “post notices in conspicuous places in all of the places of business wherein their employees are engaged”).

Although electronic communication methods are becoming more *pro forma*, there is a substantial percentage of employers that continue to communicate with their employees both electronically and in hardcopy. *J. Picini Flooring*, 356 NLRB No. 9, slip op. at 3, n.7 Further, as the very case Respondent relies upon makes clear, electronic posting may be required in addition to physical posting of paper notices. *Id.*, slip op. at 3 (emphasis added). Indeed, at no time does the Board indicate that it will accept electronic posting as a substitute for or in place of the traditional physical paper (hardcopy) posting in those situations when employers do not exclusively communicate electronically. *Id.*

There is no indication in the record that Respondent is one such employer – that is, one that solely disseminates information electronically to its bargaining unit employees. To the contrary, the record is replete with evidence establishing that Boeing communicates with these unit employees by holding meetings, distributing

literature, and utilizing power-point presentations, in addition to sending email messages. Requiring Boeing to make physical and electronic postings is well within the parameters of not only traditional Board remedies, but the methods Boeing currently uses to communicate with its unit employees as well. *Id.*, slip op. at 3 (at a minimum, the Board's remedial notices are sufficiently important to be communicated in the manner deemed appropriate by respondent for its own communications).

2) The Board has long held that the posting portion of the remedy must be coextensive with the unfair labor practice and has long-based the scope of the required notice posting on several factors: the appropriate unit certified, the targeted unit of the unfair labor practice, and the danger of future unfair labor practices being as great in one area as another. See, e.g., *Southeastern Pipe Line Co.*, 104 NLRB 575, 577 (1953) (employer required to post notices at all locations throughout its Florida and Georgia pipeline system); *Verscharen's Food Centers*, 110 NLRB 1475, 1490 (1954) (employer required to post notices at all of his Brentwood and Bethel Park, Pennsylvania stores); *International Brotherhood of Teamsters*, 111 NLRB 952, 959 (1954) (union required to post notices at its office and all of its union halls in Utica, New York). Applying these factors to the instant case, it is clear that Boeing must post notices in all Boeing facilities in the Puget Sound area where bargaining unit members are employed.

First, as the ALJ's decision and the record make clear, the Union is the exclusive collective-bargaining representative of Respondent's "Professional" and "Technical" bargaining unit employees, and the scope of that certified unit encompasses those

employees “working in the Company’s plants in the State of Washington” and listed in the specified job classifications. (ALJD 2:41-43; GC Ex. 2 at 1; GC Ex. 3 at 1). Since bargaining unit members are employed throughout the State of Washington, there can be no good faith contention that each and every Boeing facility in the Puget Sound Area employing bargaining unit members would not be included.

Second, Respondent’s unlawful refusal to provide SPEEA with presumptively relevant information pertaining to its plans to relocate *bargaining unit work* indisputably touches each and every member of the bargaining unit – whether it is the particular employee’s job being relocated or the shrinking pool of available jobs. SPEEA sought the specific information from Respondent as to the exact breadth of such relocation plans to determine the real effects on the Unit; however, the limited vague and abstract information Respondent provided was useless. Thus, Respondent’s unlawful failure to provide the requested specific information renders each and every bargaining unit member a potential target for relocation.

Third, given this potential targeting of each and every bargaining unit member, as well as the breadth of the certified unit itself, there is little doubt that Respondent’s failure to provide presumptively relevant information is system wide, reaching every Boeing facility where unit members are employed. As a result, the danger of future unfair labor practices is as great in one part of Boeing’s operations as in any other. Therefore, Boeing must be required to post notices, both hardcopy and electronic, in each and every facility in which it employs SPEEA members.

3) Finally, the remedial history pertaining to Boeing and its unfair labor practices in Washington State supports a traditional notice posting encompassing the entire SPEEA unit. In a case going back over 30 years, *The Boeing Co.*, 230 NLRB 696 (1977), Boeing unilaterally reassigned tack welding work from one unit of represented employees to another union's unit of represented employees. Finding Boeing's unilateral action violative of the Act, the Board, in relevant part, ordered Boeing to post notices at all of its facilities in the State of Washington where the first union's/unit's contract applied. *Id.* at 705. While there have been cases in the intervening years, more recently, in *The Boeing Co.*, 362 NLRB No. 195 (August 27, 2015), after finding that Boeing violated § 8(a)(1) of the Act when its human resource department required an employee under investigation to sign a confidentiality notice stating that she could/would not speak with other employees about the investigation, the Board ordered Boeing to post notices not only in the facility in which the affected employee worked, but in every facility nationwide that used the confidentiality notice. *Id.*, slip op. at 13. Keeping in line with this decades-spanning history, compelling Boeing to post notices in every facility in which SPEEA members are potentially impacted is eminently appropriate and the Board should not hesitate to order Boeing to post notices in each of its facilities in the Puget Sound area where SPEEA members are employed.

Based on the foregoing, it is respectfully submitted that the Board grant Charging Party's cross-exceptions, reject Respondent's arguments in its answering brief, and require Boeing to post hardcopy paper postings at all of its facilities in the Puget Sound area where bargaining unit members are employed in addition to electronic posting.

DATED at Seattle, Washington, this 15th day of September, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Counsel for the General Counsel's Reply Brief to Respondent's Answering Brief was served on the 15th day of September, 2015, on the following parties:

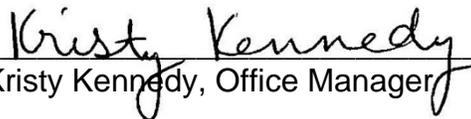
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