

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KITSAP TENANT SUPPORT SERVICES, INC.

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO

Cases 19-CA-074715
19-CA-079006
19-CA-082869
19-CA-086006
19-CA-088935
19-CA-088938
19-CA-090108
19-CA-096118
19-CA-099659

ORDER REMANDING

On May 31, 2018, the National Labor Relations Board issued a Decision and Order in this proceeding that resolved multiple complaint allegations and severed for further consideration allegations that the Respondent violated Section 8(a)(1) of the Act by maintaining various work rules. See 366 NLRB No. 98 (2018). On October 15, 2018, the Board issued a Notice to Show Cause why the severed allegations should not be remanded for further consideration under *The Boeing Co.*, 365 NLRB No. 154 (2017). The General Counsel filed a response, stating that he was not opposed to remand. The Respondent filed a response opposing remand.

Having duly considered the matter, including the arguments raised by the Respondent, we find it would effectuate the purposes of the National Labor Relations Act to remand this proceeding for further consideration in light of *Boeing*.¹

¹ Citing Sec. 10(d) and (e) of the Act, the Respondent contends that the Board cannot remand the severed allegations because it lost jurisdiction over them when the administrative record was filed in the United States Court of Appeals for the District of Columbia Circuit after the Respondent filed a petition for review of the Board's May 31, 2018 Decision and Order in that court. The Respondent is mistaken. First, Sec. 10(d) provides that the Board can modify or set aside any "finding or order" it has made or issued in a case until the underlying administrative record is filed in court. Here, the Board has not made any finding or issued any order as to the severed work-rule allegations, so Sec. 10(d) is not triggered. Second, although Sec. 10(e) provides that the jurisdiction of the court of appeals becomes "exclusive" upon the filing of the administrative record, the court's jurisdiction is only exclusive as to the non-severed matters that

IT IS THEREFORE ORDERED that, because Judge Jay R. Pollack has retired, this proceeding is remanded to Chief Administrative Law Judge Robert A. Giannasi to designate another administrative law judge in accordance with Section 102.36 of the Board's Rules and Regulations.

IT IS FURTHER ORDERED that the administrative law judge designated shall reopen the record, if necessary, and prepare a supplemental decision addressing the complaint allegations affected by *Boeing* and setting forth credibility resolutions, findings of fact, conclusions of law, and a recommended Order. Copies of the supplemental decision shall be served on all parties, after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C., December 6, 2018.

By direction of the Board:

Roxanne Rothschild
Acting Executive Secretary

are encompassed within the Board's final order. It does not extend to the severed matters that the Board expressly did not reach in its order. See, e.g., *Stephens Media, LLC v. NLRB*, 677 F.3d 1241, 1249-1250 (D.C. Cir. 2012) (holding that the presence of a severed issue does not undermine the finality of the order or impede the court's review of unrelated matters addressed in the order; nor does the court's review impede continued consideration of a severed issue by the Board). The Respondent also contends that remand is precluded by the doctrine of laches, but that doctrine has no application to cases brought before the Board. See, e.g., *Merrell M. Williams*, 265 NLRB 506, 508 (1982).