

**Berry, David P.**

**From:** Flynn, Terence F.

**Sent:** Wednesday, August 17, 2011 9:30 AM

**To:** Grant, Glenn; Meade, Kris

As much as I love Rosemary, the last person I would want reviewing my FOIA demand for access to deliberative process data is a former General Counsel. That said, I sure would love to see something juicy emerge out of these fishing expeditions. Unfortunately, these guys would readily destroy anything embarrassing.

NLRB

Conservative Group Sues Board Under FOIA,  
Asking Court to Order Boeing File Disclosure

Judicial Watch Inc., a conservative educational foundation, Aug. 15 filed a lawsuit in federal court in Washington, D.C., under the Freedom of Information Act to force the National Labor Relations Board to disclose records of internal communications and external contacts concerning an unfair labor practice complaint challenging Boeing Co.'s establishment of a jetliner assembly line in South Carolina (*Judicial Watch Inc. v. NLRB*, D.D.C., No. 11-cv-1470, lawsuit filed 8/15/11). In a complaint filed in the U.S. District Court for the District of Columbia, the group alleged that it submitted a July 14 request for documents to NLRB, which acknowledged receipt of the request two weeks later but failed to take further action within 20 working days as required by FOIA.

Asserting that it has exhausted its administrative remedies under FOIA, Judicial Watch asked the federal court to order NLRB disclosure of a variety of documents including records of communications between NLRB, Boeing, the International Association of Machinists, the White House, state governments, and other organizations. Group Cites Boeing Case Controversy

According to the complaint and a written statement Judicial Watch issued Aug. 16, its FOIA request was aimed at records concerning NLRB Acting General Counsel Life E. Solomon's decision to issue an unfair labor practice complaint against Boeing.

An NLRB administrative law judge June 14 opened an administrative hearing on the complaint, which alleges that Boeing unlawfully established a new 787 Dreamliner assembly line in South Carolina because IAM-represented workers in Washington state exercised their right to strike during previous disputes over the terms of collective bargaining agreements (114 DLR AA-1, 6/14/11). The judge has not yet heard testimony from any witnesses in the case, but has considered a number of preliminary matters, including Boeing's motion to dismiss the unfair labor practice complaint, which he denied (126 DLR A-1, 6/30/11).

In its statement announcing the lawsuit, Judicial Watch observed that a Boeing representative called the NLRB complaint frivolous and that Rep. Darrell Issa (R-Calif.), chairman of the House Oversight and Government Reform Committee, called NLRB a "rogue agency" after the acting general counsel failed to provide internal documents on the Boeing case that the committee requested and then subpoenaed (156 DLR A-1, 8/12/11).

Although the Boeing complaint was authorized by the acting general counsel and not the members of the board, the Judicial Watch statement also asserted that President Obama bypassed the Senate in 2010 to give a recess appointment to Craig Becker "to head the NLRB's five-member board." In fact, Becker is one of four members now serving on the board, but the chairman is Wilma B. Liebman. Noting Becker's former employment as an attorney for Service Employees International Union and the AFL-CIO, Judicial Watch said the labor organizations were "major financial backers of Obama and the Democratic Party."

Lawsuit Seeks Broad Disclosure by NLRB

According to the federal district court complaint, Judicial Watch asked NLRB for records from Jan. 20, 2009 to July 14, 2011, covering communications between NLRB employees concerning Boeing Co., as well as records "concerning, regarding, or relating to" the issuance of the complaint against Boeing and "the impact of the Boeing Company's new assembly plant in North Charleston, South Carolina on employment in South Carolina."

Judicial Watch also requested records of communications between NLRB and outside organizations concerning Boeing or the unfair labor practice complaint, seeking disclosure about communications with the White House, Executive Office of the President, and the states of Washington and Oregon, as well as communications with Boeing, IAM, SEIU, AFL-CIO "and/or additional third party trade union[s]" and "any additional non-governmental entities."

Asking the court to order an NLRB search for the requested documents, Judicial Watch also requested a court order to force NLRB production of any documents that are not exempt from disclosure under FOIA. The complaint seeks an award of attorneys' fees.

Judicial Watch President Tom Fitton said in the Aug. 16 statement that the issuance of the Boeing complaint was an "extraordinary decision by the NLRB to sue Boeing in order to effectively shut down an entire factory in South Carolina."

Asserting that there are "serious questions about the NLRB's apparent abuse of power," Fitton said "There is simply no good reason for the NLRB to keep these records secret—unless it has something to hide."

A request for NLRB comment on the lawsuit was not immediately answered.

The district court, which follows a system of random assignment of new cases, assigned the Judicial Watch lawsuit to Judge Rosemary C. Collyer, who served as NLRB's general counsel from October 1984 to April 1989.

Judicial Watch attorneys Michael Bekesha and Paul J. Orfanedes in Washington, D.C., filed the complaint.

2/29/2012