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## **NLRB ISSUES COMPLAINT AGAINST BOEING COMPANY FOR UNLAWFULLY TRANSFERRING WORK TO A NON-UNION FACILITY**



On April 20, 2011, NLRB Acting General Counsel Lafe Solomon issued a complaint against the Boeing Company alleging that it violated federal labor law. Specifically, the Complaint alleges that Boeing violated the National Labor Relations Act by deciding to transfer a second production line to a non-union facility in South Carolina for discriminatory reasons.

As a history, in 2007 Boeing announced that it planned to assemble seven 787 Dreamliner airplanes per month in the Puget Sound area of the State of Washington, where its employees have long been represented by the International Association of Machinists and Aerospace Workers, District Lodge 751. Boeing later said that it would create a second production line to assemble an additional three 787 Dreamliner airplanes a month to address a growing backlog of orders. In October 2009, Boeing announced that it would locate that second line at a non-union facility located in South Carolina.

On March 26, 2010, the Machinists Union filed a charge with the NLRB. Specifically, the union charged that the decision to transfer the second production line was made to retaliate against union employees for participating in past strikes and to chill future strike activity, which is protected under the National Labor Relations Act. The union also charged that Boeing violated the NLRA by failing to negotiate over the decision to transfer the production line.

The NLRB launched an investigation into the of the transfer of second line work and issued a finding that it found reasonable cause to believe that Boeing had violated two sections of the National Labor Relations Act because its statements were coercive to employees and its actions were motivated by a desire to retaliate for past strikes and to chill future strike activity.



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The complaint issued by Acting General Counsel Lafe Solomon alleges that Boeing violated two sections of the National Labor Relations Act by making coercive statements and threats to employees for engaging in statutorily protected activities, and by deciding to place the second line at a non-union facility, and establish a parts supply program nearby, in retaliation for past strike activity and to chill future strike activity by its union employees.

The first alleged statutory violation concerns Section 7 of the NLRA which governs the rights of employees. Section 7 provides that:

“Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities...”

The second alleged statutory violation concerns Section 8 of the NLRA. Section 8 governs Unfair Labor Practices. The relevant sections of Section 8(a) are:

“It shall be an unfair labor practice for an employer—

- (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
- ...
- (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.”

It is important to note that the Complaint states allegations by the Acting General Counsel that the employer has committed unfair labor practices and it is not a finding by the Board that Boeing has committed the stated unfair labor practices. At this stage, the Board has made no findings on these allegations.

After the filing of the Complaint, the next step in the process is a hearing before an NLRB administrative law judge, which occurred on June 14 at the NLRB’s Seattle office. At the hearing, the parties started the process of setting the framework for a hearing in this matter. During the hearing process, both sides will have an opportunity to present evidence and argue in favor of their position. The decision of the administrative law judge may be appealed to the Board in Washington by the filing of exceptions by either party. The Board’s decision could further be appealed to a federal court of appeals and then to the U. S. Supreme Court according to the NLRB Hearing process.

As a follow-up to the initial hearing before the administrative law judge, on June 17, 2011, NLRB Acting General Counsel Lafe Solomon appeared before the House Committee on Oversight and Government Reform at



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a field hearing in South Carolina. This field hearing was called regarding Mr. Solomon's decision to issue a complaint against Boeing. And, on August 09, 2011, the House Oversight Committee issued a broad subpoena compelling production of all NLRB documents related to the Boeing Case, following three months of correspondence between the Committee and the NLRB Office of General Counsel. In response to this subpoena, Acting General Counsel Lafe Solomon said, "To the best of my knowledge, this is the first time since 1940 that the National Labor Relations Board has been the subject of a Congressional subpoena."

At this time, the Boeing Case could and most likely will, continue into the foreseeable future. Given the current high national unemployment rate and the future of a billion dollar factory at stake, this case is seen by some as an attack on job creation by the current administration.

This case will continue to be a lightning rod for the larger national debate between supports of union rights and those who believe that companies should be able to freely choose the location of their factories.

**If you wish to discuss business or any employment law related issues with respect to your company, Henry & McCord would be happy to provide such advice. You may contact John R. LaBar at (931) 455-9301 to schedule an appointment.**

