The most radical thing the Obama administration has done.

On April 20, Lafe Solomon, the acting general counsel of the National Labor Relations Board (nlrb), issued a complaint against Boeing. Two years ago, the company had announced it was transferring the production of 2,000 airplanes from a unionized plant in Puget Sound, Washington, to a non-union plant outside Charleston, South Carolina. According to Solomon's complaint, what made this decision illegal was the company's motive. High-level Boeing officials had stated publicly that the move was being made in response to strikes—four over the previous two decades—led by the machinists' union at the Puget Sound facility. If Boeing had said the move was dictated by costs or by the weather, the nlrb would not have cried foul.

Forty or fifty years ago, these kinds of cases were common. Now, there are fewer of them—but not because companies are better-behaved. Ever since the Reagan administration, which crippled the nlrb, companies have been free to operate with impunity, moving plants or simply threatening to do so in order to quell organizing efforts. That's why Solomon's complaint, which might have gone unnoticed a generation ago, may be the most radical thing the Obama administration has done.

The nlrb's complaint has, predictably, provoked howls of outrage fromthe Chamber of Commerce, the National Association of Manufacturers, and Boeing itself, which called it "legally frivolous." Nine Republican attorneys general have demanded that the nlrb withdraw the complaint, while others on the right have suggested darkly that the agency's real motives are political. "This is nothing more than a political favor for the unions who are supporting President Obama's reelection campaign," charged South Carolina Republican Senator Jim DeMint.

In fact, the President and the White House had nothing to do with the decision. As for Solomon, he is a 39-year civil servant with no history of labor militancy. His complaint stems from a fairly uncontroversial reading of the 1935 National

Labor Relations Act (nlra), and its subsequent interpretation by the courts, according to Karl Klare of Northeastern University's School of Law. Under the nlra, employers are guilty of an "unfair labor practice" if they "interfere with, restrain, or coerce employees" in the exercise of their right to "form, join or assist labor organizations, to bargain collectively . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." That means it's illegal for a business to threaten or penalize workers for seeking to organize a union or going on strike.

According to Solomon's complaint, there is compelling evidence that Boeing did just that. Solomon cited five public statements by Boeing top executives saying that they were transferring the jobs to South Carolina to avoid strikes. For instance, on October 21, 2009, Boeing CEO Jim McNerney posted a statement on the company's intranet, which is accessible to all employees, attributing the decision to "strikes happening every three or four years in Puget Sound." Such a comment can be seen as an attempt to interfere with the right to strike: It implies that if employees do so, they will lose work to non-unionized plants in other states.

Solomon's complaint is not a ruling, but is instead more akin to a criminal indictment, in that it merely seeks to establish whether there are reasonable grounds for believing an employer has committed an unfair labor practice. By that standard, the complaint is entirely fair. It sets in motion a trial by an administrative law judge in Seattle on June 14. The loser can appeal that decision to the nlrb, whose decision can in turn be appealed before a federal court.

If the case goes that far, Boeing stands a decent chance of prevailing. To win, the nlrb would need to show that Boeing executives intended their words to have a chilling effect on the machinists' rights—but sinister motives are notoriously difficult to prove, even when statements like those of McNerney are in the public record. Ultimately, the case's fate may rest with the political inclinations of the judges. In a 1982 case, *Weather Tamer* v. *NLRB*, judges on the generally

conservative eleventh circuit threw
out an nlrb ruling against an employer.
The court had been presented with a record
of a supervisor stating that if workers
joined a union, the company would
close the plant but ruled that this statement
was not "sufficient to establish a
motive to chill unionism."
Business groups claim that if Boeing
loses, no company will be free to hire or
fire workers without second-guessing
from the nlrb. But there's another, unstated,
reason why Republicans
and conservatives are so
worried about this case. Since
the passage of the Taft-Hartley
law in 1947, which allowed
states to pass right-to-work
laws making union organization
more difficult, the
South and parts of the Rocky
Mountain and Prairie West have become
a haven for private firms attempting to
avoid unionization. That has had a profound
political impact.
The popularity of New Deal liberalism—
from the nlra to Social Security,
taxation—was rooted in the unionized
and primarily white working class of the
North. That working class has been decimated
by the movement of private manufacturing
firms to non-union states and
overseas. It has been supplanted politically
by a private sector non-union working
class more attuned to divisions of
race and religion than of class. That, and
the white Southern backlash to the civil
rights movement, were major factors in
the growth of a new Republican conservatism—
and in America's tilt rightward
over the last thirty years.
The Boeing case, then, isn't just
about corporate prerogatives. It's also
about the future of American politics.
With Solomon's complaint, the nlrb
has taken a small but definite step toward
restoring an earlier America—one
where politics wasn't dominated by the
Chamber of Commerce or demagogues
like Jim DeMint, and workers had rights
that mattered.
John B. Judis