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Last night's BNA article. ☹

NLRB

Lawmakers, Business Groups Pan Solomon And White House Roles in NLRB Boeing Case

Republican lawmakers joined South Carolina Gov. Nikki Haley (R) and executives from several national business associations May 10 in criticizing National Labor Relations Board Acting General Counsel Lafe E. Solomon for authorizing a controversial unfair labor practice complaint against Boeing Co.

Some participants at a press conference held by the U.S. Chamber of Commerce called on President Obama to "weigh in" on the dispute or withdraw Solomon's nomination to serve a full term as NLRB general counsel. The press conference followed a meeting between the lawmakers and more than 60 business leaders that was convened to discuss the NLRB complaint, which alleges that Boeing unlawfully decided to locate some manufacturing of its 787 Dreamliner jets in South Carolina in retaliation for the involvement of Washington state employees in lawful economic strikes led by the International Association of Machinists.

"We are demanding that the president respond to what the NLRB has done, because this goes against everything we know our American economy to be," Haley said.

Sen. Rand Paul (R-Ky.) said he wants to ask President Obama whether the White House has assembled an "enemies list" targeting Republican states.

Sen. Lamar Alexander (R-Tenn.) said he will offer legislation by the end of the week that would protect state right-to-work laws and limit NLRB's authority, but Sen. Lindsey Graham (R-S.C.) said the president could "fix" the Boeing litigation immediately by removing Solomon's nomination to a full term as NLRB general counsel. Sen. Tom Harkin (D-Iowa), chairman of the Senate Health, Education, Labor and Pensions Committee, reacted quickly to the criticism of NLRB, saying Republicans have attacked a "routine unfair labor practice charge" with an "overly dramatic response" and "disturbing misinformation" that he said "has needlessly complicated the legal process and distorted the public discussion of this case."

Haley Calls NLRB Action an 'Unbelievable Attack.'

Randy Johnson, senior vice president of labor, immigration, and employee benefits for the chamber, said Boeing has finished building the facility in North Charleston, S.C., where a nonunion workforce is expected to build three Dreamliners per month, while IAM-represented employees in the Puget Sound area build seven per month. The union filed a March 2010 unfair labor practice charge alleging that the decision to move some production from Washington to South Carolina was unlawful discrimination against the union-represented workers, and NLRB's April 20 complaint against the company makes the same allegation ([77 DLR AA-1, 4/21/11](#)).

Calling the East Coast aircraft production new work that was not taken away from the IAM-represented workers, Johnson said "the precedent that the NLRB is attempting to establish here is so fundamentally unsound and troublesome that it cannot be ignored," explaining the chamber's decision to host a meeting that several speakers called an urgent session.

Haley told reporters that the Boeing dispute "is an issue that may have started in South Carolina, but we want to make sure that it never touches another state."

Stating that job creation will be “key” in the United States in coming years, Haley said the effect of the NLRB complaint was to tell businesses that not only could they not do business in a right-to-work state, but that they should create jobs overseas. “That’s what the president is saying through Lafe Solomon,” Haley said.

President Obama “has got to speak up—we need to see leadership,” Haley added. The president, she said, “has to tell us, if we can’t create new jobs this way, how exactly are we supposed to create jobs.”

The South Carolina governor called the complaint against Boeing “an unbelievable attack on not just right-to-work states but every state that is attempting to put their people to work.”

Lawmakers Defend Boeing, Criticize White House,

Graham said Boeing made the decision to locate some of its Dreamliner production in South Carolina after the company received more orders than expected. “They had a dilemma of expanding businesses, which is a great dilemma to have,” he said. The company consulted with the Washington state unions representing Boeing employees, Graham said, but made a decision to locate its second assembly line in South Carolina after considering its options, which included an attractive package of incentives from the state of South Carolina.

The senator said under the law the company had a right to make the decision it did, but NLRB’s acting general counsel has issued a complaint Graham called “chilling.” If a chief executive officer’s remarks about the cost of doing business in one location can prevent the firm from ever relocating to another location, he warned, “you’re going to destroy the economy.”

Graham commented that Bill Daley, former secretary of commerce during the Clinton administration and now Obama’s chief of staff, served on Boeing’s board of directors in 2009 when the board approved the building of Boeing’s second production line in South Carolina. Graham argued that either the Obama “vetters” who considered Daley for the White House job considered the NLRB complaint against Boeing without merit, or “they went and hired someone who busts unions at the White House.”

The senator also said Obama named Boeing’s Chief Executive Officer Jim McNerney to the President’s Export Council. The Daley and McNerney appointments, he said, are the “best evidence” that the NLRB complaint against the aircraft manufacturer is frivolous.

Sen. Jim DeMint (R-S.C.) joined Haley and Graham, and called NLRB’s action on the unfair labor practice charge “pandering to unions,” while Rep. Joe Wilson (R-S.C.) complained that the NLRB action undermined Haley’s ability to recruit businesses to build in South Carolina. “Clearly,” Wilson said, Boeing’s decision to conduct some of its Dreamliner production in South Carolina “is not retaliation—this is creating jobs.”

Rand Paul began with a question for the president: “Mr. President, do you have an enemies list?” Paul questioned whether the decision made in the Boeing case was made because the state “appears to be a Republican state, with two Republican senators,” or whether the complaint was issued because South Carolina is a right-to-work state.

Noting that Kentucky has two Republican senators, Paul asked, “Are we on your enemies list?” Questioning whether the government was saying businesses could not locate in states that happened to be Republican, Paul said “I find this appalling and I expect the president to immediately rescind this assault on business.”

Alexander Nearing Final Draft of Legislation

Sen. Lamar Alexander (R-Tenn.) said he, Graham, DeMint, and Paul are continuing to work on legislation, the proposed Right to Work Protection Act ([85 DLR A-10, 5/3/11](#)), which he called important for every state in the country and for manufacturers trying to determine whether they will be able to manufacture in the United States the products they sell in this country.

“I can’t think of one single action the federal government could take that would make it harder to bring new jobs into Tennessee than this Boeing complaint, if it were to become the law,” Alexander said.

Alexander said Nissan and other automakers decided to build cars in right-to-work states in the Southeast because of the “different union environment” offered in those states. Nissan now says it will make in the United States 85 percent of what the company sells here, Alexander said, and said “that’s what we want.”

Alexander said the draft legislation would strengthen the protection of right-to-work laws under the NLRA, and would prevent NLRB from going forward with its case against Boeing “or attempting the same strategy against other companies.” The legislation would limit the board from ordering an employer not to relocate jobs from one location to another, he said, and would guarantee an employer’s right to decide where it should do business.

The Tennessee senator said the proposed legislation also would protect the right of an employer to engage in free speech on the subject of the costs associated with having a unionized work force “without fear of such communication being used as evidence in an anti-union discrimination case.”

Alexander said there have been a “number” of senators interested in the proposed Right to Work Act. He said a draft of the bill will be circulated in the next day or two and he expects it to be introduced by the end of the week. He observed that 22 states are right-to-work states and some have Democratic senators who may support the bill.

Business Groups Join in Protest

John Engler, former Republican governor of Michigan and now president of the Business Roundtable, said his group considers the NLRB complaint against Boeing a threat not only to the airplane builder, but to every company headquartered in the United States.

Engler said his group represents companies with nearly \$6 trillion in annual revenues and approximately 13 million employees. The group's view, he said is that the NLRB complaint is “wrong-headed” and unsupported by legal precedent, but would establish an “ominous” precedent limiting the ability of companies to settle in the most attractive and competitive business environments they can identify.

The Business Roundtable president asked NLRB to “step back” from the Boeing complaint, and suggested that President Obama should clarify his position on the issue, while Congress acts on legislation to ensure “that this never again should become an issue.”

Dan Yager, chief policy officer and general counsel of HR Policy Association, representing the chief human resource officers of more than 320 U.S. companies, said his group has not seen the Boeing controversy as a “right-to-work versus non-right-to-work issue.”

What happened in the case against Boeing, Yager said, is that the company has been penalized for being open and discussing management concerns with the union representative of its Puget Sound employees before going forward. The company had the right under its collective bargaining agreement to decide plant locations without bargaining, Yager said, and simply tried to work issues out through discussions that were unsuccessful.

Yager said he believes that Boeing will win the unfair labor practice case brought against it. He said “if the acting general counsel's view of labor relations is correct, of what the law is, then labor relations in this country is much more broken than I certainly thought it was.”

Graham Calls for White House Intervention

In answer to a question about the president's role in a case that is being handled by an independent federal agency, Graham said he understands NLRB's independence, but he said “this is legal slander, for lack of a better word” and called the Boeing complaint “out of bounds when it comes to precedent.”

Graham said there was no precedent for a case like the one against Boeing because “nobody in their right mind would make these conclusions unless you had an agenda beyond the law.”

Graham said the NLRB complaint “is going nowhere” and Boeing will stay in South Carolina. “The reason we're pushing back,” he said, is that the president has made “some appointments” at NLRB that are “out of the mainstream.” Graham said the consequences of the complaint against Boeing could be “absolutely devastating” and said “political appointees have made job creating very difficult.”

“The president could fix this,” Graham said. “He could remove the nomination of Mr. Solomon, who will never see the light of day in the Senate.”

Harkin Sees ‘Assault on the Middle Class.’

In a statement released shortly after the press conference, Harkin said “[w]hat we are really witnessing here is another example of the Republican assault on the middle class that has been echoing across the country for months now.”

“Instead of focusing on how we can get Americans working again and get the middle class back on its feet, Republicans have chosen to spend their time attacking the handling of a routine unfair labor practice charge. This overly dramatic response and the disturbing misinformation they are peddling has needlessly complicated the legal process and distorted the public discussion of this case,” Harkin said.

The Iowa senator added that “opponents of workers' rights have also mischaracterized the fundamental issue at stake, suggesting that this case represents an assault on ‘right to work’ laws,” an assertion he called “just factually incorrect.”

Harkin said “unions are one of the few voices left in our society speaking up for the little guy, and if we let powerful CEOs trample all over these rights without consequences, we might as well give up on having a middle class altogether.”

Harkin said his Senate committee will hold a hearing Thursday on “why the middle class is increasingly slipping out of reach for Americans.” The Boeing litigation will likely come up for discussion; among the witnesses scheduled to appear are Boeing General Counsel J. Michael Luttig, who has been very [critical](#) of the NLRB complaint, and Sarah Fox, a former Democratic NLRB member who now serves as legal counsel to the AFL-CIO.

Solomon said in a May 9 [statement](#) on the NLRB website that the complaint against Boeing is “just the beginning of a legal process” that will move forward to a hearing on June 14 and consideration by an administrative law judge and the board. “We hope all interested parties respect the legal process, rather than trying to litigate this case in the media and public arena,” he said.