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Sent: Monday, June 27, 2011 2:12 PM
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Congressional Republicans meddle with NLRB case that involves Boeing

The NLRB is months, if not years, away from determining whether Boeing built a manufacturing plant in South Carolina to punish its unionized workers in Everett, Wash. But that hasn't halted the GOP's brazen campaign of interference.

Michael Hiltzik

June 26, 2011

In the quaint old days, even the most ravenous publicity hounds in Congress would hold off announcing a big investigation until they had something to investigate. As is shown by the furor enveloping a National Labor Relations Board case involving Boeing Co., those days are gone.

The NLRB is looking into whether Boeing chose to establish a manufacturing plant for its new 787 airliner in South Carolina to punish its unionized workers in Everett, Wash., which would be illegal. But the board is months, if not years, away from making any such determination or taking any concrete action against Boeing. An administrative law judge convened a hearing June 14, but thus far has heard not a single word of testimony.

Yet one would gather from the rhetoric that the case is shaking the republic to its foundations. A few weeks ago, Senate Republicans openly intimidated the NLRB's general counsel, a career public servant named Lafe Solomon, by threatening to kill the confirmation of his appointment.

Functioning as Boeing's full-time henchmen, they've interfered with the NLRB's work by flagrantly misrepresenting the nature of the case, its precedents and its legal underpinnings, and introducing special-interest legislation to protect the company from the board. Rep. Darrell Issa (R-Vista), who as chairman of the House Committee on Oversight and Government Reform is striving to make himself into that chamber's outstanding hot air machine, has already held a hearing on the matter. Its very objective-sounding title: "The NLRB's Holding Pattern on Free Enterprise."

And from your elected Democrats? Silence. To paraphrase a song from "Monty Python and the Holy Grail," they've bravely turned their tails and fled.

The issues in the case arose last year when Boeing decided to build three 787s a month outside Charleston, S.C. Its existing manufacturing facility in Everett would still build seven a month.

Boeing negotiated at length with the machinists union in Everett, seeking concessions, before it decided instead to expand in South Carolina. The union subsequently filed a complaint with the NLRB, alleging that Boeing acted to punish the Everett workers for exercising their legal rights to bargain collectively and to strike. NLRB counsel Solomon spent months trying to broker a settlement between the two sides. When that failed he went ahead and filed a complaint against Boeing on April 20, citing the union allegation.

Here's the fundamental law governing the case: Every business has the right to manufacture its products anywhere it wishes. But if it moves jobs in reprisal for workers exercising their legal rights, including the right to strike, that's against the law.

There's nothing doubtful about that principle or novel in its application. There's even a legal term for it: the "runaway shop" doctrine. The key Supreme Court precedent dates from 1965. Another important ruling was handed down in appellate court in 1967 by Warren Burger, whose conservative bona fides were established two years later when he was named chief justice of the U.S. by President Nixon.

Boeing has never made it a secret that among its goals in establishing the new manufacturing line was to keep it away from the International Assn. of Machinists and Aerospace Workers, which represents the Everett workers. During a conference call in 2009, Boeing Chairman and Chief Executive Jim McNerney observed that the "modest inefficiencies" associated with manufacturing in South Carolina would be "more than overcome" by avoiding the strikes that were occurring "every three or four years" in Washington state.

Boeing's general counsel, J. Michael Luttig, told a Senate committee in May that a 2008 machinists strike that shut down the 787 line for 58 days cost the company more than \$1 billion and damaged its standing with customers and investors. He said Boeing was "legitimately concerned" about the possibility of further strikes.

Those statements appear to be admissions that the factory decision was aimed against the union. But Boeing also says it was motivated by the lavish incentives offered by South Carolina, which have been estimated at \$900 million — more than the construction cost of the plant. Luttig mentioned the state's "exceptional business environment." That includes its "right-to-work" law, which prohibits union membership from being a condition of employment and raises other obstacles to union organizing.

The NLRB's task is to determine how these factors played into Boeing's decision and to fashion a remedy if it finds the company's real motivation was to punish union workers. Either the union or the company can appeal an adverse decision in court.

The process won't be short or easy, even without the GOP's hysterical posturing. Rep. Issa opened his hearing (staged in the South Carolina community that hosts the Boeing plant) by announcing that the NLRB case would have "disastrous consequences." His star witnesses against the NLRB included a corporate labor attorney, a local headhunter employed by Boeing, a local Boeing employee and Alan Wilson, the attorney general of South Carolina.

Wilson took a swipe at the union, claiming that its last strike "caused customers to question whether or not to buy from Boeing ever again." That's amusing, because Boeing claims that the 787 is the fastest-selling aircraft in history and that it has 850 orders in hand.

Boeing has also confessed that when the machinists struck in 2008 the 787 was already 15 months behind schedule — chiefly because the company had outsourced engineering and parts manufacturing around the world and failed to manage that process competently.

Among the problem locations were — hello — South Carolina, where a manufacturing subcontractor turned out such wretched work that Boeing had to take over the operation, at a cost of \$1 billion. If customers have any doubts about Boeing, the reason is more likely management ineptitude than union activity.

Issa and his GOP colleagues maintain that the NLRB action is a union-inspired assault on "right-to-work" states and therefore on the working person's right to be free of union oppression. So it's proper to examine the effect of "right-to-work" laws.

There's no consistent evidence that "right-to-work" laws contribute materially to economic growth. The 22 "right-to-work" states generally rank among the poorest in the nation: The only two with average household incomes higher than the U.S. median are North

Dakota and Wyoming, which have tiny workforces. South Carolina ranks 45th in median household income at \$41,101.

There are indications, however, that business proprietors in those states keep more of their income, meaning that less of it trickles down to workers — a clue to why managements like Boeing's may be so enamored of the South Carolinas of the world.

This is, of course, the American malady — a race to the economic bottom in which decisions are made to benefit managers and shareholders at the expense of the workforce or, indeed, the product. The trend is certainly enabled by the decline of union representation, which has shrunk from more than 20% to less than 12% just since 1983, according to the U.S. Bureau of Labor Statistics. This is roughly the same period in which the middle class has lost its grip on the benefits of economic growth and productivity.

And this is the trend that "right-to-work" advocates and their water carriers in the GOP seek to perpetuate. One has to ask: Why aren't President Obama and congressional Democrats pushing back, hard, against this brazen campaign of interference with the legal deliberations of an independent government agency? Or are they content to stand by while the American worker is led further down the road to serfdom?

Michael Hiltzik's column appears Sundays and Wednesdays. Reach him at mhiltzik@latimes.com, read past columns at latimes.com/hiltzik, check out facebook.com/hiltzik and follow @latimeshiltzik on Twitter.

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