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Subject: Plane Nonsense - Sorting out the Facts in the Boeing Case EPRN
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Plane Nonsense - Sorting out the Facts in the Boeing Case
Posted By: Ellen Dannin - Pennsylvania State University
Posted May 13, 2011
Labor and Employment Law

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It is hard to think of an NLRB case that has been as misrepresented as the Boeing case. Unfortunately, with the loss of beat reporters, especially reporters with deep knowledge of labor issues, we have lost the voices of those who could provide light instead of adding to the heat.

The NLRB has tried to address this problem with its new Office of Public Affairs. Not only is there now a front page link to information, but also following that link will lead to clear reports on significant cases, such as Boeing, with links within the case report to copies of significant documents, such as the complaint.

So reporters could easily find information on this case, but few, it seems, take advantage of it. Instead, we continue to see reporters churning out views instead of news. And rather than helping the public understand the issues, we have news as a contact sport complete with competitive cheerleading.

The result in the Boeing case is "news" stories filled with attack statements directed toward the NLRB, NLRA, and Acting General Counsel Lafe Solomon. We read pro-con views rather than facts that could be found easily by reading the NLRB's complaint and the Office of Public Affairs memo.

Here, then are a few corrections of commonly reported ideas/claims/events.

First, this case is not about right-to-work states. Rather, this is a garden-variety case of an employer's retaliating against its employees for striking when the parties were unable to come to an agreement on terms and conditions of employment during bargaining. In the Boeing case, we also have an employer's making anti-union public statements over a number of years that it would move the Dreamliner work to South Carolina because Boeing was unhappy about its Oregon and Washington employees' past strikes. The NLRB complaint sets out the dates and statements it relies on.

The NLRB has decades of experience with cases of this sort, and the National Labor Relations Act is clear that employer actions like Boeing's violate the law. If this were a murder case, it would be a case in which the police found a person saying : "I did it," while standing over a fresh corpse with smoking gun in hand.

Indeed, the only thing that is special about this case is that Boeing made so many public statements threatening to take actions that violated the law. Indeed, the remarkable thing would have been for the General Counsel not to issue a complaint on the evidence it had.

NLRB-FOIA-00004613

The law is clear about the rights and wrongs of this sort of the case.

The NLRA says in Section 13 that the right to strike is protected by law.

Section 7 declares that employees' engaging in or refusing to engage in concerted activities, such as giving one another mutual aid or support, is activity that is protected by law.

It is a violation of the NLRA to discourage employees from engaging in protected concerted activity, which includes strikes, and also a violation to discriminate against employees in order to encourage or discourage union membership.

Second, the complaint, which was issued after an investigation, charges that Boeing's actions were not only illegal but also were so pervasive and serious that they were inherently destructive of employees' protected rights under the NLRA.

Third, despite the seriousness of the employer's acts, the NLRB has not sought as a remedy that Boeing cannot produce its products in South Carolina. Again, this case is not about right-to-work states, as some news stories have claimed. This is not a case about taking away work from South Carolina workers.

Rather, this is a case that is about work that was illegally taken away to retaliate, also illegally, against workers for engaging in acts that are protected under law -- striking. The remedy is that the work that was transferred must be performed in Washington.

This does not mean that Boeing cannot do work in South Carolina or any state for that matter. The complaint says that as long as Boeing's decisions are not made for illegal motives, it can have work done it South Carolina:

Other than as set forth in paragraph 13(a) above, the relief requested by the Acting General Counsel does not seek to prohibit Respondent from making non-discriminatory decisions with respect to where work will be performed, including non-discriminatory decisions with respect to work at its North Charleston, South Carolina, facility." The complaint also asks as a remedy that a Boeing official read aloud to the employees (or be present while Board agent reads aloud) a notice to employees of their rights under the NLRA and post that notice on Boeing's intranet.

Second, news stories have generally fallen down on reporting on the process that led to the issuance of the complaint and on the process that will later take place. The basics are that there was an investigation after a charge was filed alleging that NLRA had been violated. The charging party had to submit evidence to support that charge, and the NLRB investigators assigned to the case took evidence from all parties. What is special in this case was that part of the evidence could be found by checking the newspapers for Boeing's threats.

Once the investigation was complete, the General Counsel's office decides whether there was reasonable case to believe the NLRA was violated. If reasonable cause exists, then the complaint is issued, and efforts are made to settle the case.

If the case is not settled, then the case is scheduled for a hearing before an Administrative Law Judge. All parties will have an opportunity to present witnesses and other evidence. Once the trial is over, the ALJ will assess the evidence presented at trial and decide whether or not the law has been violated. The ALJ's decision can be to find that all, none, or some of the alleged violations occurred. The parties can appeal the ALJ's decision case to the Board.

NLRB-FOIA-00004614

Third, some have claimed that the NLRB acted wrongly in issuing the complaint against Boeing because employers have a “free-speech right.” This is a common misperception, but it is not correct.

Section 8(c) of the NLRA says: “The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.”

In other words, section 8(c) says nothing about protecting free speech. All it does is create a safe harbor for speech, as long as that speech does not threaten reprisals or force or promise benefits.

Boeing’s speech was not protected by 8(c) because it threatened reprisals against employees for exercising their protected rights.

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Links for more information related to the Boeing case

Office of Public Affairs publicinfo@nlrb.gov

Boeing Complaint Fact Sheet

The NLRB's Boeing complaint

Acting General Counsel Lafe Solomon releases statement on Boeing complaint May 9, 2011, including links to correspondence between Solomon and Boeing

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Comments

Boeing

By rhamelin
Posted May 16, 2011 - 01:05:56
What an interesting article that explains fully what this case is about. Thanks!

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Research posted by Ellen Dannin

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NLRB-FOIA-00004615
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11 Working USA 219 (2008).
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Blog Posts by Ellen Dannin

May 13 2011 - 12:17pm

Plane Nonsense - Sorting out the Facts in the Boeing Case

NLRB-FOIA-00004616

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About EPRN

EPRN, begun and launched in early 2011, is a non-profit, non-partisan organizaton located and administered at the offices of the Labor and Employment Research Association (LERA) at the University of Illinois, Urbana-Champaign School of Labor and Employment Relations. EPRN is sponsored by grants from the Rockefeller and Russell Sage foundations.

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