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Harkin: Forced testimony at U.S. House hearing 'shameful'

Braley plans 'tough' questions for GOP Chairman Issa
By Lynda Waddington | *06.16.11 | 3:25 pm*

Congressional Republicans who are forcing the National Labor Relations Board's acting general counsel to testify at a field hearing in South Carolina in connection with ongoing legal proceedings are more concerned with scoring political points than they are with allowing an established process to continue, U.S. Sen. Tom Harkin and U.S. Rep. Bruce Braley said Thursday.

At a Friday U.S. House Oversight Committee hearing Lafe Solomon, acting general counsel for the NLRB, is expected to face a litany of questions from Republicans concerning the labor law complaint his agency filed against Boeing Co. The case was launched against Boeing in April, following union allegations in 2010 that the company was violating federal labor law by retaliating against organized workers in Washington state for past strikes. Boeing has denied the allegations, stating that the new plant it has constructed in South Carolina was completed for numerous market reasons and not because of South Carolina's right-to-work law that would inhibit unionization.

Solomon's compelled appearance coincides with an NLRB judge's formal review of the case against Boeing during a Seattle hearing. Republicans have attempted to paint the dispute as a government over-reach into private industry decisions, especially internal decisions on where to do business. Democrats, including Harkin and Braley, contend the expansion or future location of the business isn't the issue at hand, and that the ongoing investigation is focused on possible labor law violations.

"This is shameful, shameful," Harkin said of the threat of subpoena used to guarantee Solomon's appearance before the committee. "What they are trying to do is disrupt the judicial process. There is a process by which both labor and management can file complaints with the NLRB. The General Counsel's Office investigates those complaints [and] they try to reach conciliation.

"What I know about this case is that labor filed such a complaint, alleging that Boeing was retaliating because labor was exercising its legal right; and that the General Counsel investigated, took depositions, and evidently found there was enough evidence to warrant this case going forward. So, the General Counsel filed this case with the administrative law judge, and that's where it is right now."

The administrative law judge will make a finding in the case, which can be appealed by either party to the NLRB. The finding of the NLRB can also be appealed to the Circuit Court of Appeals. And, ultimately, that decision can be appealed to the U.S. Supreme Court.

"So what [House Republicans] are trying to do in South Carolina is unduly brow-beat and threaten this career civil servant for doing his job," Harkin said. "It is akin to going after a court, because there is a case before the court and you want to disrupt that case — to make it so tainted that it can't go forward.

"I don't know if Boeing was right or wrong. I don't know if they are guilty or not. But that's why you have this process with an administrative law judge and appeals all the way to the Supreme Court. And

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there is so much phoniness out of South Carolina on this. They are saying, 'This is going to destroy right-to-work.' This has nothing to do with right-to-work. Secondly they say this could mean that this will close down all these jobs in South Carolina and ship them back to Washington state. Not necessarily. There are other remedies that the court could could impose on Boeing, if the court finds them guilty."

Harkin added that he suspects, based on the hard line of attack launched by Boeing officials, certain individuals in South Carolina and the right-wing of the Republican Party, that Boeing "must be afraid" there is enough evidence to prove the company retaliated against workers for exercising their legal right to strike.

"I also think that they are trying to send a signal to career civil servants that they better be careful," Harkin said.

"Not only are they holding up [Solomon's] nomination as general counsel, but they are holding up the nomination for secretary of commerce, which has nothing to do with this. They are demanding that President Obama intervene in this action to remove it from the NLRB — something that would both unethical and unlawful. That's how bad this has gotten."

Solomon, a career civil servant with the NLRB, was named acting general counsel by President Barack Obama in June 2010 and nominated for the post in January. He began his career with the NLRB in Seattle in 1972.

Solomon originally declined an invitation to testify before a June 17 field hearing of the House Oversight Committee, "Unionization Through Regulation: The NRLB's Holding Pattern on Free Enterprise," but was then told to reconsider or face a possible subpoena to appear.

In a letter to Oversight Committee Chairman Darrell Issa (R-Calif.) dated June 11, Solomon agreed to appear before the committee while simultaneously noting his concerns about congressional interference.

"I am not aware of any other time in history of the Office of the General Counsel that a General Counsel has been compelled to testify at a Congressional hearing about the merits of a pending case," he wrote. "I continue to have serious concerns about a personal appearance at this hearing and the potential impact that certain areas of inquiry may have on the due process rights of litigants and on the interest of protecting the legal integrity of the decision making process."

Braley, a member of the House Oversight Committee, said Thursday he shares Solomon's concerns, and he intends to bring up the "inappropriateness" of the proceedings during the hearing.

"I will be participating in that hearing and I will be asking some very tough questions of the committee chair, Mr. Issa, about the role of his committee interfering in a pending adjudicative procedure," Braley said.

"In my judgment, this is no different that jury tampering that would occur during an ongoing trial. There is a reason why agencies have both a rule-making process and adjudicative process. They are supposed to be separate and distinct, and one is clearly supposed to be free from outside interference. So the very nature of this hearing and the purpose of this hearing cause me great concern."

The NLRB General Counsel's Office complaint (PDF) alleges that Boeing "threatened or impliedly threatened" workers that they "would lose additional work in the event of future strikes." It also

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quotes Jim McNerney, chief executive, president and chairman of Boeing, as saying that the decision was made due to "strikes happening every three to four years in Puget Sound."

If such allegations are proven to be true, Boeing would be in violation of the National Labor Relations Act, which provides employees the right to join labor organizations and engage in other lawfully-related activities, including work strikes.

The U.S. House committee hearing is scheduled to begin at noon at the Charleston County Council Chambers in North Carleston, S.C. Also called to testify are South Carolina Gov. Nikki Haley, Alan Wilson, state attorney general, a Texas law professor, president of a staffing company and a labor attorney.

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