



## NLRB Issues Complaint Against Boeing For South Carolina Expansion

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In 2009, Boeing, Inc. decided to complement its production lines in Washington State with a new assembly plant near Charleston, South Carolina. The second line, scheduled to open this summer, will focus primarily on assembly of the 787 Dreamliner. Boeing plans to produce three 787 planes per month at the South Carolina facility, while producing seven planes per month at its Puget Sound facility. Boeing recently reported that construction of the South Carolina facility is nearly complete and that the company has hired more than 1,000 new workers to work the assembly line.

Prior to Boeing's decision to create the South Carolina plant, Boeing held discussions with the International Association of Machinists and Aerospace Workers, District Lodge No. 751 ("Union"), regarding potential placement of the new 787 production line in Puget Sound. The Union has been the bargaining unit representative for Boeing's production and maintenance employees in Washington and Oregon since 1975. The Union led multiple strikes against Boeing in Washington in 1977, 1989, 1995, 2005, and 2008. The 58-day strike in 2008 reportedly cost Boeing 1.8 billion dollars. Boeing reported that "extensive" discussions with the Union broke down without agreement concerning "demands that would have hampered the company's competitiveness in the increasingly competitive global market for large commercial airplanes."

**Boeing Hit with Unfair Labor Practices Charge and NLRB Complaint.** On March 26, 2010, the Union filed a charge with the National Labor Relations Board ("NLRB") alleging that Boeing engaged in multiple unfair labor practices related to its decision to place the second 787 production line in a non-union facility. The Union also charged that Boeing violated the National Labor Relations Act ("NLRA") by failing to bargain over the decision. On April 20, 2011, the NLRB initiated a complaint, through its acting general counsel, to prevent Boeing from utilizing the 787 Dreamliner production line at the non-union plant in South Carolina. *Boeing Co.*, NLRB, No. 19-CA-32431, *complaint issued 4/20/11*.

The complaint alleges that Boeing made several "coercive statements" that it would or has removed work due to Union-led strikes and transferred its second manufacturing line to the non-union facility in South Carolina. In support of its complaint, the NLRB offers statements by several top Boeing executives that work stoppages at its Puget Sound facility were considered in deciding to establish a second line. The complaint alleges that Boeing's President, Chairman, and CEO once stated that moving the 787 Dreamliner work to South Carolina was due to "strikes happening every three to four years in Puget Sound." The complaint further alleges that Boeing's Executive Vice President once stated that Boeing decided to locate its second line in South Carolina because of past strikes and threatened the loss of future work opportunities because of the strikes. According to the NLRB, Boeing allegedly acted out of "anti-union animus" in establishing the South Carolina plant, and its decision to move had the effect of "discouraging membership in a labor organization" in violation of the NLRA. The NLRB maintains that it will not direct Boeing to *close* its South Carolina facility, but it does seek an order requiring Boeing to operate the second line of 787 aircraft assembly in Washington State utilizing lines maintained by the Union.

In an April 20 news release, Boeing stated that it will "vigorously contest" the complaint. Boeing asserted that none of the production jobs created in South Carolina has come at the expense of jobs at its Puget Sound facility. Boeing further asserted that no Union members have been adversely affected and Union employment in Puget Sound has even increased by approximately 2,000 workers since Boeing decided to expand to South Carolina. Boeing also criticized of the timing of the complaint, which came 17 months after the expansion was announced and mere months before the first airplane is scheduled to be assembled.

With respect to Boeing's duty to bargain, the NLRB's investigation found no merit to the Union's allegation that Boeing failed to bargain in good faith over its decision to establish the second line. The NLRB determined that although the decision would typically be a mandatory subject of bargaining, the Union waived its right to bargain the issue in its collective bargaining agreement.

Boeing must file an answer to the complaint in early May and a June 14 hearing is scheduled before an NLRB Administrative Law Judge in Seattle.

**Impact of the *Boeing Co. Complaint*.** Perhaps the NLRB's complaint is not totally surprising in light of the makeup and political leanings of the current Board. The Board is presently made up of four members, two of whom are former union lawyers. The Board has made no secret of its pro-union orientation. In fact, earlier this year, NLRB acting general counsel issued a memorandum asking regional directors to identify and bring cases that may be successful vehicles to reverse two pro-employer decisions reached by the prior Board concerning back pay. The Board also recently proposed a requirement that private sector employers post a notice about workers' right to unionize.

Even so, the NLRB's complaint is unprecedented and could have serious implications for companies looking to expand, particularly to right-to-work states. In right-to-work states, employees cannot be required to join or pay dues or fees to a union. In issuing this complaint, the NLRB seeks to limit the location in which a private company can build a factory. The complaint clearly implies that an employer with an existing union shop in one state may not put a new facility in a non-union state, at least if the employer is seeking to protect itself from strikes in doing so. If the NLRB is successful, unions/the NLRB could enforce a veto-like power over employers regarding where they may build future plants.

The NLRB is currently facing backlash for its decision to issue the complaint. On April 28, the attorneys general of nine states sent a letter to the board's acting general counsel condemning the action as "ill-conceived" and "retaliatory" and asked him to immediately withdraw the complaint. The letter and other opposition sources generally focus on the economic implications of the complaint. As the U.S. recovers from one of the worst economic failures since the Great Depression, opposition sources assert that the complaint could inhibit recovery by slowing business growth and the creation of new jobs.

Several years may pass before a final decision is reached in this case. Although the hearing is set for June 14, 2011, the decision rendered as a result will likely be appealed to the full NLRB, which could then be appealed to federal circuit court, and ultimately to the United States Supreme Court. For now, unionized employers should be aware that they will face increased scrutiny under the current Board and therefore conduct their operations with extra care.

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