



Does the NLRB Really Expect Businesses to Ignore Strikes?

By Paul Kersey

Summary

A National Labor Relations Board complaint against Boeing for the company's decision to build a new plant in a state with right-to-work protections could put future business growth in Michigan and other unionized states in jeopardy.

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The National Labor Relations Board's operations are designed to look to outsiders as if they were judicial in nature. There's a prosecutor of sorts, the general counsel, and the board's decisions read like judicial opinions. But in reality, the NLRB operates in a twilight zone — its members are generally representatives of the two main political parties with the majority chosen from the president's party, and the majority bloc can be relied on to reward its friends and punish its adversaries. There being a Democratic administration in Washington now, expect the unions to get all the close calls. And even the ones that shouldn't be close.

At the end of March, the general counsel brought up a complaint against aircraft manufacturer Boeing for its decision to open up a new assembly line for its 787 "Dreamliner" in North Charleston, S.C. The original line at Boeing's Puget Sound plant in the state of Washington remains open, but that line has been shut down by two lengthy strikes called by the International Association of Machinists over the last six years. Boeing is hedging its bets by setting up a second line for the popular aircraft at a non-union shop in a state with right-to-work protections for employees. The complaint alleges that Boeing's actions constituted illegal discrimination against union workers.

On the surface the prosecution has a case. It's fairly clear that labor relations were a factor in Boeing's decision to set up shop in South Carolina. The NLRB is supposed to prevent employers from discriminating against employees who engage in "protected activities," such as joining unions and going on strike.

But to say that Boeing cannot take notice of troubled labor relations at Puget Sound as it makes plans to build more airplanes is to say that Boeing must make itself more vulnerable to a strike, and arguably punishes the South Carolina workers for their apparent preference to remain non-union. Boeing's South Carolina workers have the right to refrain from unionizing, too, and the NLRB is supposed to protect their rights as well.

It doesn't help matters that everyone is dealing with a statute, the National Labor Relations Act, that is vague about what companies and unions are actually allowed to do. Unionized workers in Puget Sound still

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have steady jobs, but there will be less work for them, fewer jobs and less overtime, than there might have been. Is this discrimination? As Robert Verbruggen points out in a recent article at National Review, the general counsel's complaint against Boeing "comes out of left field," but it's still in line with "the murky words of the law itself," leaving Boeing subject to the caprices of a politicized labor board.

The IAM's wisdom has been dubious, especially from the workers' perspective. The 2005 strike lasted 28 days. The 2008 strike lasted eight weeks, and according to The New York Times workers missed out on \$7,000 in base pay. The Seattle Times accounts of the strike are vague as to whether or not workers benefitted much from the walkout. For its part Boeing likely lost \$2 billion on account of the strike.

If the National Labor Relations Board opts to punish Boeing for setting up shop in South Carolina, the likely result will be that employers are hamstrung by radicalized union officials, while union officials will be in a position to call strikes with near impunity, giving little regard to benefits for workers or damage to employers.

There are those who argue that the ultimate purpose of this whole NLRB effort is to put the right-to-work movement and less unionized states at a disadvantage by preventing companies from creating new jobs in those states. But this could easily backfire, with new companies afraid to locate in heavily unionized states like Michigan knowing that the law will make it harder for them to expand elsewhere.

The most likely result is everyone loses. If there's one thing a struggling American economy does not need, it's the further empowerment of radical union officials and the disruption of more strikes. Congress should be looking for ways to rein in the National Labor Relations Board and ensure that employers are free to protect themselves from strikes called by radical union officials.

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