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National Labor Relations Board Seeks To Force Boeing To Direct Work To Union-Represented Plant

On April 20, 2011, the National Labor Relations Board, in what many are calling the strongest signal yet of the pro-labor bent of the President Obama era Board, issued a complaint seeking to reverse the decision by Boeing Co. to build a second production line for its new 787 Dreamliner at a non-union plant in South Carolina. Boeing, who has a long-standing bargaining relationship with the International Association of Machinists and Aerospace Workers ("IAM"), announced in 2007 its plan to assemble the 787 Dreamliner at its Washington state, Puget Sound facility - where IAM represents the maintenance and production employees. In 2009, Boeing announced that it would open a second production line for the 787 Dreamliner at its non-union North Charleston, South Carolina plant. According to the complaint, in the lead up to and in the wake of that announcement, Boeing is alleged to have made numerous statements citing the IAM-represented employees' past strike activity and the possibility of future strikes as an overriding factor in deciding to locate the second production line at its South Carolina plant. The complaint alleges that Boeing's public statements, in violation of the law, were coercive to employees and that its decision was motivated by a desire to retaliate for past strikes and chill future strike activities.

Boeing has issued a statement maintaining that it has every right to build U.S. production capacity outside the Puget Sound region and has called the complaint "legally frivolous" and a "radical departure" from precedents. A hearing is scheduled for June 14, 2011 before an Administrative Law Judge.

While the merits of the Board's complaint are yet to be determined, the cautionary lesson for employers is that its public statements regarding the business reasons for plant openings, relocations and closures should be carefully weighed and measured so as not to expose itself to claims that anti-union animus was a controlling rationale for its decision.

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