Boeing Asks Judge To Dismiss NLRB Case

Phuong Le, Associated Press

SEATTLE (AP) — Boeing on Tuesday asked a judge in Seattle to dismiss a case brought by the National Labor Relations Board that accuses the plane maker of breaking the law when it built a non-union production line in South Carolina.

The complaint by NLRB acting general counsel Lafe Solomon accused Boeing Co. of illegally retaliating against union workers for past strikes by adding a non-union assembly line for its new 787 passenger jet in South Carolina. The NLRB said Boeing also should move that assembly work to unionized plants in Washington state, where other 787s are assembled.

At the opening of a hearing on the case Tuesday, Boeing attorney William Kilberg said the legal dispute has cast a shadow over the company. He said the process has affected Boeing, its employees, its supplies and its investments. "It's made life very, very difficult for Boeing," he said.

"There's no one injured, no one identified as being injured. No one has lost a job. We have no idea when the board talks about work being transferred, what work they're referring to," Kilberg said, adding that 3,176 jobs have been added in Everett, Wash., north of Seattle.

Carson Glickman-Flora, an attorney representing the International Association of Machinists and Aerospace Workers, said outside the courtroom Tuesday that it is not necessary to demonstrate economic harm to show Boeing broke the law.

The government's complaint alleges that company executives made repeated statements to Boeing employees and the media citing the union's past strike activity and the possibility of future strikes as the overriding factors in deciding to locate a second line in South Carolina.

Mara-Louise Anzalone, counsel for the NLRB's Solomon, told the judge Tuesday that "this is a rather large, rather straightforward case," and that union work was transferred to a non-union location.

Lawyers for the NLRB and union have until Tuesday to respond to Boeing's motion to dismiss the case. The judge adjourned the proceedings Tuesday afternoon, while urging the parties to continue to meet to discuss which documents would be submitted into evidence.

Boeing contends that the NLRB unfairly twisted or mischaracterized selected statements or took them out of context to file the complaint. The company says stopping 787 work in South Carolina would be impermissibly punitive because it would effectively shut down a new plant that has already hired 1,000 new workers.

The hearing is just the beginning of what could be years of litigation between Boeing and the government. Arguments before an administrative law judge could last a month or two, NLRB spokeswoman Nancy Cleeland said, with a decision likely to come later this year. If Boeing loses, it could appeal the case to the five-member NLRB and then to a federal appeals court.

Boeing spokesman Tim Neale said on Tuesday that no recent settlement talks had been held, and none are planned. Both sides have said, however, that they would be open to resuming negotiations.

"Boeing needs to bring a settlement. They broke the law," said Connie Kelliher, an IAM spokeswoman.

Gary Chaison, professor of industrial relations at Clark University, said there's a good chance the union and Boeing could settle the case given all the legal uncertainty.

"It's not a clear-cut case in either direction," Chaison said. "Was it a wise business decision or was it retaliation?"

He said Boeing could keep the pledge for the new 787 lines to remain in South Carolina, but also promise some new work for the Washington plant "in a way that saves face for everyone."

In testimony at a Senate hearing last month, Boeing general counsel Michael Luttig told lawmakers he fully expects to lose the case before the judge and the NLRB because of a perceived pro-union tilt by a majority of the board. He said he is confident an appeals court would ultimately reverse that.

The case has taken on major political overtones, with Republicans in Congress accusing the board of attacking right-to-work states in favor of labor unions. South Carolina's Republican congressional delegation and other lawmakers have tried without success to put public pressure on the Obama administration to get the NLRB to back off.

Boeing opened its new 787 new assembly facility in Everett, Wash., in May 2007. It opened a new 787 assembly plant in North Charleston, S.C. last Friday.

Boeing aims to deliver its first 787 later this year. Airlines have ordered more than 800 of the fuel-efficient planes. By the end of 2013 it plans to build 10 per month — including seven in Washington and three in South Carolina.

Boeing is based in Chicago.

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Sam Hananel in Washington and Joshua Freed in Minneapolis contributed to this story.

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