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Boeing Labor Battle Is Poised to Go Before Judge

By STEVEN GREENHOUSE

Barring a last-minute settlement, lawyers for the [National Labor Relations Board](#) will begin arguing before a Seattle judge on Tuesday that [Boeing](#) broke the law by building a new, nonunion production line in South Carolina instead of expanding its unionized operations in Washington State.

Boeing, the N.L.R.B. and the International Association of Machinists and Aerospace Workers local that initiated the case all still say they would like to find a way to settle. Appeals could grind on for years, clouding the future of Boeing's \$750 million [Dreamliner](#) assembly plant scheduled to start production in July in North Charleston, S.C. Negotiators and outside analysts said that any deal would most likely require Boeing to commit to adding some level of new production lines to its Puget Sound manufacturing hub in exchange for certain union concessions, like a no-strike pledge.

The labor board's top lawyer says Boeing's decision to move the operation to South Carolina constituted illegal retaliation against Boeing's unionized workers in Washington for engaging in their legally protected right to strike, including a 58-day walkout in 2008.

Boeing has acknowledged that the fear of labor disruptions factored into its thinking, but it said the main reason for moving the line was South Carolina's lower production costs. Starting pay at the South

Carolina plant is \$14 an hour, while starting pay in Washington is \$15 an hour, rising to an average of \$28 an hour.

The case has stirred a political firestorm. Republicans have joined business leaders in accusing the labor board of trying to sabotage right-to-work states as well as the fundamental right of corporate managers to decide how and where to run their businesses.

South Carolina's governor, Nikki R. Haley, wants to make the dispute an issue in the presidential campaign, while Congressional Republicans have threatened to cut the labor board's financing and have urged President Obama to withdraw the nomination of Lafe Solomon, the board's acting general counsel, who brought the Boeing case.

"It is absurd, in this country that represents free enterprise, that one unaccountable, unelected, unconfirmed acting general counsel can threaten thousands of jobs," said Senator Jim DeMint, Republican of South Carolina. "This is something you would expect in a third world country."

Although the president appoints the board's top officials, the agency operates independently. Several Republicans have accused President Obama of carrying water for organized labor by having the board bring the case. Mr. Solomon and Obama administration officials say the White House has had nothing to do with the dispute.

The White House has been largely silent about the case, although numerous Congressional Democrats have assailed Republicans for attacking an agency that they say is merely enforcing the law and protecting workers' right to strike.

Mr. Solomon brought the case after the machinists' union filed a complaint, arguing that the South Carolina plan was illegally taking jobs from Washington State. As a remedy, he wants Boeing to move the 1,000-employee production line, which will initially build three planes a month, to Washington.

Mr. Solomon said in an interview that he spent three months in settlement talks with both sides before the board filed the case, and that contacts continue intermittently. "Nothing would make me happier

than to reach a settlement,” he said.

In a speech last week at a conference at the New York University School of Law, he added: “I felt and still feel these parties have a longstanding relationship with each other. They have a deep past together and have a deep future together, and it would be advantageous to all if a settlement could be worked out.”

Many legal specialists say the N.L.R.B. and the machinists’ union have a good chance of winning before the administrative law judge in Seattle and in the next stage of the legal process, an appeal to the Democrat-dominated, five-seat labor board in the District of Columbia. The case before the law judge is expected to last weeks as the board and Boeing spar over which documents to turn over to the other side.

Boeing and some legal specialists say the company is likely to win in the federal circuit court that would hear appeals after that.

But no one wants the case to drag on for years.

The machinists’ union has hinted that it might drop the case if Boeing pledged to locate some future production in Washington State — perhaps the Air Force replacement tanker or the next-generation jet after the 787 Dreamliner or both.

Tim D. Neale, a Boeing spokesman, said the company was open to a settlement, although he said the machinists were demanding too much.

“We always like to keep an open line of communication with the union in situations like this, but at this point it’s unclear to us what a reasonable settlement would look like,” he said. “Our position continues to be that the complaint should be withdrawn. It should never have been brought in the first place because, given legal precedent, it will not withstand the scrutiny of the federal courts on appeal.”

Boeing insists that the machinists’ union has nothing to complain about because the company has

hired 2,000 unionized workers in Washington since it announced plans to open the South Carolina assembly plant.

But Tom Wroblewski, president of the local at Boeing's Puget Sound operation, said most of those 2,000 workers were temporary and many worked on a surge line that might close once the South Carolina operation gets up to speed.

Several aviation consultants said Boeing could be reluctant to invest further in the South Carolina plant while the N.L.R.B. case hangs over its head.

Scott Hamilton, managing director of the Leeham Company, an aviation consulting firm, sees one possible route toward a settlement. He said production demands were so great for the Dreamliner that Boeing could expand its long-term production of aircraft to at least 10 a month in the Puget Sound area, from the planned seven, while still keeping the production line in South Carolina. That way, he said, Boeing could say the union cannot complain that its members had been hurt by creating the South Carolina production line. He said Boeing has recently talked of assembling 17 Dreamliners a month.

The union hopes Boeing will commit to build its next-generation Dreamliner in Washington at a so-called supersite that would combine final assembly as well as component production. "Here in Washington State, we have the world's most skilled work force for aircraft production," Mr. Wroblewski said.

He also suggested that Boeing could continue operating the plant in North Charleston, even without the Dreamliner, by moving some of its parts production from foreign contractors to the South Carolina plant. Analysts said that was an unlikely solution because it might involve breaching overseas contracts.

Richard L. Aboulafia, an aviation analyst at the Teal Group, predicts it will be very hard to reach a settlement. "There's nothing to talk about here — there's no halfway," he said. "The strategy on the

union's side is to pursue this as much as they can while they have a political ally in the White House.”

Joseph G. Marra, a Seattle lawyer who represents management in labor cases, said the machinists' union has Boeing “over a barrel” in this case.

“Executives from the company made statements about how they're going to transfer work because people engaged in strikes or legal disputes,” he said. “As a former N.L.R.B. attorney, I think that's a fairly straightforward case. This is not something that is unusual in the annals of the board. They would bring this case whether the investment was for \$200 million or \$200.”

Nonetheless, Lea B. Vaughn, a labor law professor at the University of Washington, said she doubted the courts would ultimately require Boeing to move the South Carolina production to Washington because it would hugely interfere in a company's investment decisions.

“It's hard for me to imagine an order that's going to stand up in the long run in litigation because of the amount of investment they've made there,” she said.



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