



FACT SHEET

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Why Are Big Labor and the Obama Administration Targeting Boeing?

Union Bosses Determined to Block Exodus of Private-Sector Employees and Their Paychecks From Forced-Unionism States

The highly controversial complaint brought by National Labor Relations Board (NLRB) Acting General Counsel Lafe Solomon against Boeing, in which he asserts that the aerospace company committed an “unfair labor practice” when it opted in 2009 to open a new aircraft assembly line in Right to Work South Carolina, represents a double-edged sword for Big Labor.

Mr. Solomon, whose nomination to be the NLRB’s top lawyer has yet to be confirmed by the U.S. Senate and who holds his position due to a temporary appointment by President Obama, filed his complaint at the request of International Association of Machinists (IAM/AFL-CIO) union officials. Machinists union chiefs wanted Boeing’s new production line for its 787 Dreamliner to be built in their Seattle-area stronghold, and not in South Carolina, where Boeing employees had rejected IAM union monopoly bargaining.

Officials of other unions have vociferously defended Mr. Solomon’s action. For example, during a May 20 media event in Washington, D.C., AFL-CIO President Richard Trumka preemptively declared Boeing guilty of having “violated” the law and recommended that Mr. Solomon apply the same arguments he had made in the Boeing complaint to go after other businesses.¹

At the same time, the facts of the Boeing case cut against standard Big Labor claims regarding the economic impact of South Carolina’s and the other 21 state Right to Work laws currently on the books. As an April 25 *New York Times* editorial, sympathetic to Mr. Solomon’s stance, acknowledged, his complaint calls public attention to the “flight of companies to ‘right-to-work’ states where workers cannot be required to join a union.”²

But it is the official position of many professional apologists for compulsory unionism that there is no such flight. This year alone, the Washington, D.C.-based Economic Policy Institute (EPI), a “think tank” sustained largely by contributions from forced union dues-funded union treasuries, has published a series of papers that stridently contend state Right to Work laws have “no positive impact on job growth.” Gordon Lafer, a political science professor at the University of Oregon and a former

¹ Sean Higgins, “AFL-CIO’s Trumka: NLRB Should Apply Boeing Case to All Businesses,” *Investor’s Business Daily*, May 21, 2011.

² The editorial quoted is entitled “Boeing and the N.L.R.B.”

professional union strategist, is the author or coauthor of most of the EPI's recent anti-Right to Work polemics.³

The Boeing controversy naturally makes Dr. Lafer and other forced-unionism apologists of his ilk uncomfortable. When the *Daily Labor Report*'s Michael Rose asked Dr. Lafer to comment on the NLRB complaint against Boeing in May, the professor responded defensively:

As for Boeing, [Dr.] Lafer said that is a special case. Because Boeing is a defense contractor, it is obligated to keep its work within U.S. borders. Although Boeing moved work to [Right to Work] South Carolina . . . other manufacturers have moved work overseas or to Mexico.⁴

The fact is, Boeing is not “obligated to keep its work within U.S. borders,” and actually has outsourced the design and manufacture of many critical components for the Dreamliner itself to suppliers in countries like Italy, Sweden, China, and South Korea.⁵ With all due respect to Dr. Lafer, the company's decision to locate its new Dreamliner assembly line in South Carolina, rather than anywhere else in the world, cannot plausibly be attributed to politics. Boeing was acting, as the firm's Executive Vice President and General Counsel J. Michael Luttig bluntly put it in a May 3 open letter to Mr. Solomon, “in the [economic] interests of the Company, the Company's employees, and the Company's shareholders.”

But if Dr. Lafer is surely wrong in his insinuation that Boeing decided to expand production in a Right to Work state, rather than in Mexico or China, for political reasons, what about his contention that Boeing is a “special case”?

Boeing Is No ‘Special Case’

In reality, U.S. Commerce Department data going back two decades show that Boeing is far from unique in preferring to expand its payrolls and production in a Right to Work state rather than in a forced-unionism state.

Currently, 22 states have Right to Work laws on the books that prohibit forcing employees to join or pay dues or fees to an unwanted union as a condition of employment. In the other 28 states, workers may be fired for refusal to pay dues or so-called “agency” fees to a union they have opted not to join.

Over the last decade (2000 to 2010), Commerce Department data show total wage and salary disbursements by private businesses increased from \$5.111 trillion to \$5.203 trillion, in constant 2010 dollars.⁶ The historically small 1.8% national real increase was largely a consequence of the impact of

³ See, e.g., “‘Right-to-Work’: Wrong For New Hampshire,” an EPI briefing paper published this April 5, and attributed solely to Dr. Lafer.

⁴ See Mr. Rose's May 18 *Daily Labor Report* article, “Right to Work Laws Defended, Attacked in Wake of NLRB ULP Charge Against Boeing.”

⁵ See, e.g., Michael Hiltzik, “787 Dreamliner teaches Boeing costly lesson in outsourcing,” *Los Angeles Times*, February 15, 2011.

⁶ All state wage and salary data cited here come from the “State and Local Personal Income” section on the <http://bea.gov> web site (U.S. Bureau of Economic Analysis). Data for years other than 2010 are converted into 2010 dollars with the help of the CPI-U.

the severe 2008-2009 recession. But the national data mask a huge disparity between the performance of Right to Work states and forced-unionism states.⁷

After adjusting for inflation with the U.S. Labor Department's basic consumer price index (CPI-U), private-sector wage and salary disbursements increased by 8.6% in Right to Work states from 2000-2010, compared to a 1.8% overall decline for forced-unionism states.

Individual state rankings confirm there was a very large Right to Work advantage in wage and salary growth over the past decade. Eight of the top 11 states for wage and salary growth are Right to Work states. Meanwhile, 13 of the bottom 14 states lack Right to Work laws.

The strong correlation between Right to Work status and wage and salary growth is at least equally strong when one considers data going back all the way to 1990. Nine of the 12 top-ranking states for 1990-2010 prohibit compulsory union dues and fees. But not one of the 13 bottom-ranking states has a Right to Work law.

Altogether, forced-unionism states' share of the total wages and salaries earned by private-sector employees across America fell by 5.6 percentage points from 1990 to 2010. Only a small fraction of this decline can be accounted for by the fact that Oklahoma became a Right to Work state in 2001. The vast majority of the decline can be explained by two factors: First, from 1990-2010 private-sector employment in the 22 current Right to Work states by 32.0% -- an increase triple that of forced-union-dues states combined.⁸ Second, per employee wages and salaries rose considerably more rapidly in Right to Work states than in forced-unionism states over the past two decades.

Real, Spendable Wage and Salary Compensation Per Private-Sector Employee Higher in Right to Work States

Dr. Lafer was obviously wrong to contend that Boeing's decision to expand its payrolls in a Right to Work state rather than a non-Right to Work state was unusual. Last year, private-sector wage and salary disbursements in Right to Work states were roughly \$116 billion greater than they would have been had they increased only as fast as the national average from 2000 to 2010.

What about current earnings per employee? This is obviously a separate issue from wage and salary growth. But the current-earnings indicator also points to a significant advantage for Right to Work states, once interstate differences in living costs are accounted for.

As Americans commonly understand, living costs, especially for housing, but also for groceries, utilities, transportation, health care, and a host of other goods and services, are substantially higher in northeastern and Pacific Coast states than they are in the nation as a whole. And none of the states in the Northeast or on the Pacific Coast has a Right to Work law.

⁷ For simplicity's sake, Oklahoma, which adopted its Right to Work law in 2001, is counted as a Right to Work state for the entire period analyzed here.

Indices widely acknowledged as the most comprehensive and reliable gauge of interstate differences in living costs are calculated and published four times a year by the Missouri Economic Research and Information Center (MERIC), based in Jefferson City, Mo.

In recent years, MERIC's quarterly indices have been used by an array of researchers to calculate the average real spending value of given nominal incomes, wages and salaries in different states. Right to Work proponents and foes alike have used the MERIC indices to adjust for regional cost-of-living differences.⁹ No one has credibly accused MERIC's statisticians either of sloppiness or of having an ax to grind.

After cost of living is accounted for with the help of MERIC's indices, the average wage and salary compensation per private-sector employee in Right to Work states in 2010 was \$46,941, roughly \$1100 more than the forced-unionism state average of \$45,813.¹⁰

Taken together, the data regarding wage and salary growth and cost of living-adjusted 2010 wages and salaries discredit two favorite, mutually inconsistent theories of forced-unionism apologists. They resoundingly refute the claims of Big Labor spokesmen like Gordon Lafer that there is no large, secular shift of private-sector jobs from non-Right to Work states to Right to Work states. The data also rebut other proponents of compulsory unionism who grudgingly admit that Right to Work states "create and retain more . . . jobs," but suggest that the jobs created outside of forced unionism's dominion are "the wrong kind."¹¹

Lafe Solomon 'Is Trying to Equate an Employer's Concern With Strikes That Delay Production . . . With Hostility Toward Trade Unionism'

These are the facts: For decades, private-sector payrolls have grown far more rapidly in Right to Work states than in non-Right to Work states; moreover, private-sector employees in Right to Work states take home real, spendable pay that is typically higher than or equal to what their counterparts in forced-unionism states take home. Businesses and employees alike have an incentive to locate in a Right to Work state whenever feasible.

And this brings us back to the Boeing case.

Acting General Counsel Solomon's complaint in *Boeing* has outraged Americans across all regions of the country because it effectively asserts the NLRB has the prerogative, in many instances, to tell businesses where they may or may not expand. The NLRB is no doubt a powerful federal agency, but Mr. Solomon's claim is all the same remarkable.

⁸ Calculations derived from data supplied on the "State & Local Employment" section of the <http://bls.gov> web site (U.S. Bureau of Labor Statistics).

⁹ See, e.g., "Union Monopoly Linked to Lower Purchasing Power," National Institute for Labor Relations Research fact sheet, August 27, 2009, and Elise Gould and Heidi Shierholz, "The Compensation Penalty of 'Right to Work' Laws," Economic Policy Institute briefing paper, February 17, 2011.

¹⁰ Cost of living-adjusted data are derived by dividing the total private-sector wage and salary in a state by the average of its quarterly cost of living indices for 2010 (excluding the highest and lowest for each state) and then dividing the quotient by the number of private-sector employees in the state, as reported by the U.S. Bureau of Labor Statistics.

As economist Arthur Laffer and senior *Wall Street Journal* editorial page economics writer Stephen Moore noted in a pungent *Journal* op-ed May 13, this is “the first time a federal agency has intervened to tell an American company where it can and cannot operate a [new] plant within the U.S.”

Mr. Solomon claims the basis for his complaint is how Boeing chose in 2009 to address at last its chronic problem of strikes instigated by top officials of the International Association of Machinists union. Since 1975, IAM union chiefs have ordered employees at Boeing’s Washington State and Oregon facilities out on strike five times.

The most recent strike, in 2008, lasted 58 days and cost the company \$1.8 billion.

Nearly two years ago, having failed in their latest attempt to secure a no-strike deal with the union, Boeing finally decided to open a new 787 Dreamliner production line in North Charleston, S.C., and thus expand its total capital investment in the Palmetto State to roughly \$2 billion. Boeing executives knew at the time that a majority of their current South Carolina employees had opted against union monopoly bargaining. The new line’s availability for production during a strike would mitigate the company’s potential revenue losses.

If Boeing is ultimately allowed to proceed with this plan in peace, its employees, union and nonunion alike, will surely benefit from an investment that is creating, directly and indirectly, thousands of jobs at a time America especially needs them. But Mr. Solomon says, “No.” His complaint insists that Boeing’s eminently sensible move to expand production in a Right to Work state so as to cut the cost to customers, employees and shareholders of disruptive IAM strikes was driven by “anti-union animus” and illegal.

In an interview with *Slate* magazine, former Clinton-appointed NLRB Chairman William Gould, himself a lifelong advocate of forced unionism, elucidated one key flaw with Mr. Solomon’s reasoning: “The general counsel is trying to equate an employer’s concern with strikes that disrupt production and make it difficult to make deadlines -- he’s trying to equate that with hostility toward trade unionism. I don’t think that makes sense.”¹²

Another glaring problem with the complaint against Boeing is that, while the NLRB has long had the authority to regulate, in some circumstances, businesses’ ability to move jobs from one facility to another, the board has never before claimed to have the power under any circumstances to dictate where a business may add new jobs while maintaining or expanding employment at its current facilities. Former George W. Bush-appointed NLRB Chairman Peter Schaumber hammered this point home to the *Seattle Times*: “This complaint is extreme. Any employer has the right to open a new facility anywhere.”¹³

¹¹ See, e.g., Ray Hogler and Robert LaJeunesse, “Oklahoma’s Right to Work Initiative: Labor Policy and Political Ideology,” *Labor Law Journal*, Fall 2002, pp. 109-121.

¹² Dr. Gould was quoted by *Slate*’s David Wiegel in the article “Air Rage,” posted May 17.

¹³ Quoted by Kyung M. Song, “Boeing’s South Carolina Move Gets Even More Political,” *Seattle Times*, June 9.

Board Bureaucrats Clearly Hope Boeing Executives Won't Have the Stomach For a Multi-Year Legal Battle

Dr. Gould and Mr. Schaumber rarely agree about controversial points of labor law. But they have no trouble agreeing that, if federal appeals courts and the U.S. Supreme Court follow decades of precedents, they will rule against the NLRB in the Boeing matter should the case get that far. Why then is Lafe Solomon risking his reputation by pursuing such a legally questionable case?

Mr. Solomon's decision to file the Boeing complaint only makes sense if one assumes the aerospace giant is not his principal target. In all likelihood, his main goal is instead to send a message to all owners and managers of unionized businesses who desire to extricate themselves from profit- and wage-consuming Big Labor class warfare. If companies act on this desire by expanding in one of the 22 Right to Work states, the Boeing complaint signals they may soon find themselves embroiled in a costly and lengthy "unfair labor practice" case. Unless Boeing opts to spend millions of dollars litigating the issue for several years, potentially, in order to vindicate companies' legal right to expand where they choose, many firms will be far more reluctant in the future to expand their capacity in a Right to Work state than they would have been before the Boeing complaint was filed.

As the first hearing in the case got underway in Seattle June 14, NLRB Administrative Law Judge Clifford Anderson wasn't subtle in suggesting to Boeing that any legal victory the company won after fighting the complaint to the end would be pyrrhic:

Judge Anderson stressed at the hearing that litigating the complaint could take years, especially if the battle went all the way to the Supreme Court. "I'll be retired or dead," he added. If his decision in the case were to be appealed, the case would next go to the full NLRB, which currently has four members. That appeal alone would take one to the three years, the judge said.¹⁴

A settlement made between Boeing and IAM officials might potentially involve an agreement by the company to increase further its payrolls in the Pacific Northwest or other parts of the country where aerospace employees are heavily unionized. It might also involve the company's acquiescence to so-called "card check" unionization drives at some of its nonunion facilities. Boeing executives will undoubtedly decide either to keep battling the NLRB complaint or settle based on what they believe is in the best interest of their shareholders. That's their prerogative.

But what's best for Boeing is not necessarily what's best for private-sector job creation, and independent businesses and employees, around the country. That's why freedom-loving Americans are now mobilizing in support of various measures in Congress that would undo, to varying degrees, the damage wrought by Mr. Solomon.

For example, one measure now before both the U.S. Senate and House, known as the Job Protection Act, would explicitly prohibit NLRB bureaucrats from ordering any employer to relocate jobs from one site to another. This legislation would also free employers and employees to communicate

¹⁴ Melanie Trottman, "Boeing, NLRB Clash Over Non-Union Plant," *Wall Street Journal*, June 15.

honestly with one another regarding the costs associated with unionization without fearing that the discussion might lead to the company's being charged with "anti-union discrimination."¹⁵

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Nothing here is to be construed as an attempt to aid or hinder the passage of any bill before Congress or any state legislature.

¹⁵ Visit <http://thomas.loc.gov> and type in "Job Protection Act" in the "Search Bill Summary & Status" box to find out more about this legislation.