

NATIONAL LABOR RELATIONS BOARD VS. BOEING – WOULD OUR FOUNDERING FATHERS BE CONCERNED?

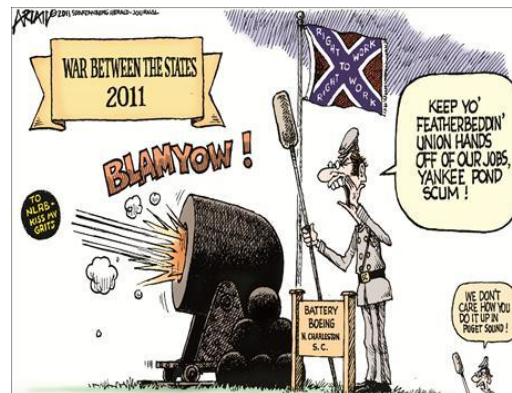
Stephen L. Bakke – May 12, 2011

The Issue Was Framed by Some Senators

A little over a week ago, a large group of senators joined Orrin Hatch, John McCain, Rand Paul, Chuck Grassley, and Jim DeMint and signed a compelling and imploring letter to the President. This letter objected to unprecedented actions taken by the leadership of the National Labor Relations Board (NLRB). These NLRB leaders indicated an intention to transform the government’s role in labor disputes, while still not having been subjected to the required congressional approval of their appointments.

*The NLRB, at the behest of Acting General Counsel Lafe Solomon, has taken unprecedented legal action against The Boeing Company to prevent it from expanding productions into South Carolina, a state that assures workers the freedom not to join a union as a condition of employment If the NLRB prevails, it will only **encourage companies to make their investments in foreign nations, moving jobs and economic growth overseas.** America will not win the future if Washington penalizes workers in states that have discovered winning economic strategies.*

OK, but why were these senators meddling in the day to day conduct of an independent agency? Was it just because their nose was “bent out of shape” over Obama’s ignoring their constitutional role of “advise and consent”? Nope! – it’s about much more than that.



Just 'Gimme the Facts!

OK! I found some basic indisputable facts and characteristics regarding this case:

- The NLRB is an independent federal agency which is assigned the responsibility of investigating unfair labor practices. There is not to be a presumption that in any given disagreement, a union should have preferential treatment.

- Boeing employs more than 150,000 people in total.
- Boeing is based in Washington State where it has manufacturing facilities.
- There is great demand (800 on order) for Boeing's 787 Dreamliner aircraft which necessitated a decision to decide where a manufacturing facility should be built.
- The Washington State production facility will continue to operate without a reduction in workers. In fact **2,000 new workers have been hired** in Washington.
- There is a history of strained relations and costly labor disputes at Boeing.
- South Carolina was the Boeing's choice for a major new production facility. As of now, there are already 1,000 South Carolina employees on Boeing's payroll.
- South Carolina is a "right to work" state – i.e. one can't be forced to join a union.
- South Carolina offers a better tax environment for manufacturers. And thanks to tort reform, Boeing knew the risk of frivolous lawsuits would be lowered.

Sometimes You Know You're Right – But Still Don't Know Why?!

When hearing about this, I was intuitively troubled – not by the fact that the union objected to Boeing's expansion in South Carolina, but by the fact that the NLRB consented to bring unfair labor practice charges against Boeing. The assertion is that Boeing's decision was punishment of the union for prior labor disputes. When did legitimate business cost analysis become forbidden? Does a business give up that convenience when it becomes unionized? I acknowledge and understand the basis for, and reality of, a labor/management dispute. But federal jurisdiction over reasonable and legitimate free enterprise decision making seems grossly inappropriate – but why?! ***Because our founders were logical thinkers as well as Patriots!!!***

It's All About "Dual Sovereignty," Stupid!

We have something in this country called "Dual Sovereignty" (more about that in a future report). This is a basic provision for our form of government as provided for in the Constitution. The term is descriptive of the fact that the federal and state governments each have their own distinct sovereign constitutional powers. While I understand that federal law can trump state law on some issues, I found reference to the fact that the Supreme Court has upheld that each level of government can "remain independent and autonomous within their proper sphere of authority." Permit me to quote Senator Orrin Hatch et al, as they commented on the issue of health care reform:

... It (the proposed requirement) renders states little more than subdivisions of the federal government. This violates the letter, the spirit, and the interpretation of our federal-state form of government ...

How Do the Founders Describe Their Intent re: Dual Sovereignty?

Our founders saw the value of competition among and between the individual states. That's part of what **federalism** is all about. Our federal form of government relies on the states continued ability not only to serve as a check on the federal government, but also on each other. James Madison wrote this in Federalist Paper No 51:

*Ambition must be made to counteract ambition This policy of supplying, by opposite and rival interests, the defect of [those who have] better motives this second method will be exemplified in the **FEDERAL republic** of the United States.*

And Alexander Hamilton is very specific about the advantages of interstate competition in Federalist No. 7.

*Competitions of commerce would be another **FRUITFUL SOURCE OF CONTENTION**. The States less favorably circumstanced would be desirous of escaping from the disadvantages of local situation, and of sharing in the advantages of their more fortunate neighbors. Each State, or separate confederacy, would pursue a system of commercial policy peculiar to itself.*



Bottom Line

If the NLRB prevails in attempting to force Boeing to expand only in “non-right to work” states, the impact would have a **SIGNIFICANTLY** negative impact on promoting a pro-jobs atmosphere in the country. **BUT EVEN MORE IMPORTANT** to the future of the country at large, it would be a step towards undermining the concept of federalism. Marion Smith of the Heritage Foundation wrote this in the Washington Times:

*In attacking the ability of states to determine their own business climate, the NLRB’s ruling reveals an authoritarian turn in the left’s assault on economic freedom. We see a federal agency propping up failed state labor policies. That testifies to how far this country has wandered from its original understanding of enterprise, competition and **FEDERALISM** Paralyzing regulation of business activity dampens the spirit of enterprise. To turn the tide, we must restore the essence of **FEDERALISM** and economic freedom which allows prosperity to flourish.*