

could offer labor cost reductions that would enable the employer to meet its profit objectives," 303 NLRB at 392, and (2) a union is not entitled to such information if the Board determines in hindsight that the union could not have made sufficient concessions to change the decision and therefore that the decision was not a mandatory subject of bargaining. Chairman Liebman would consider modifying the Dubuque Packing framework by requiring employers to provide requested information about relocation decisions whenever there is a reasonable likelihood that labor-cost concessions might affect the decision. She posits that, if the employer provided the information and the union failed to offer concessions, the union would be precluded from arguing to the Board that it could have made concessions. If, on the other hand, the employer failed to provide such information where labor costs were a factor, it would be precluded from arguing that the union could not have made sufficient concessions.

The General Counsel wishes to examine the concerns raised by Chairman Liebman in *Embarq*, and determine whether to propose a new standard in cases involving these kinds of information requests. That determination will be made based upon a case-by-case review of submissions to the Division of Advice. Therefore, Regions should submit to Advice all cases presenting the question of whether an employer violated Section 8(a)(5) by refusing to provide information related to a relocation or other decision properly analyzed under *Dubuque Packing*.

Signed,

R.A.S.

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THE NEW NLRB: BOEING IS JUST THE BEGINNING

(By Hans A. von Spakovsky and James Sherk)

The National Labor Relations Board (NLRB) raised a lot of eyebrows by filing a complaint against Boeing for opening a new plant in a right-to-work state. But that action is just the beginning of the board's aggressive new pro-union agenda. An internal NLRB memorandum, dated May 10, shows that the board wants to give unions much greater power over employers and their investment and management decisions.

Under current NLRB rules, companies can make major business decisions (like relocating a plant) without negotiating with their union—as long as those changes are not primarily made to reduce labor costs. For example, a business can unilaterally merge several smaller operations into one larger facility to achieve administrative efficiencies. Companies only have to negotiate working conditions, not their business plans.

The NLRB apparently intends to change that. In the internal memorandum, the board's associate general counsel, Richard Siegel, asks the NLRB's regional directors to flag such business-relocation cases. Siegel explains that the Board is considering "whether to propose a new standard" in these situations because the chairman of the NLRB, Wilma Liebman, has expressed her desire to "revisit existing law in this area" by modifying the rule established in a case called *Dubuque Packing*.

Apparently, Liebman did not like having to apply the *Dubuque Packing* rules in a recent case involving the *Embarq* Corporation and the AFL-CIO. The NLRB decided that under the *Dubuque Packing* rules, *Embarq* did not violate the National Labor Relations Act by refusing to bargain with the union over its decision to close its call center in Las Vegas (a right-to-work state) and relo-

cate that work to its call center in Florida (also a right-to-work state).

Specifically, the NLRB wants to force companies to provide detailed economic justifications (including underlying cost or benefit considerations) for relocation decisions to allow unions to bargain over them—or lose the right to make those decisions without bargaining over them. It is a "heads I win, tails you lose" situation for unions. Either way, businesses would have to negotiate their investment plans with union bosses. In the concurrence that she wrote in the *Embarq* decision Liebman expressed her displeasure that "the law does not compel the production of" such information to unions.

What Liebman envisions would raise business costs enormously. Current labor law and the attitude of the pro-union NLRB enables unions to drag negotiations on . . . and on . . . and on. Until bargaining hits an "impasse," employers could not legally make any business changes opposed by their union.

The NLRB's goal is not just to prevent companies from investing in right-to-work states. The board apparently also wants to force employers to make unions "an equal partner in the running of the business enterprise," something the Supreme Court ruled in *First National Maintenance Corp. v. NLRB* and is specifically not required by the NLRA. But the board wants business decisions made to benefit unions, not the shareholders, owners, and other employees of a business, or the overall economy. The Boeing charges are evidently just a first step toward that goal.

#### EXTENSION OF MORNING BUSINESS

Mr. ALEXANDER. Mr. President, I ask unanimous consent that morning business be extended until 9 p.m. with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ELECTRIC VEHICLES

Mr. ALEXANDER. Mr. President, Senator CORKER and I had the privilege of being in Chattanooga, Tennessee on Monday for the opening of Volkswagen's North American plant. It was a great day for our country. Here is a major global manufacturer making in the United States what it plans to sell in the United States. We salute Volkswagen. I salute Chattanooga and Tennessee. One-third of the manufacturing jobs in our State are auto jobs. There was a new Volkswagen Passat that gets 43 miles a gallon. That is good news for Americans who are paying \$4 or more a gallon for gasoline.

But as I was there at that celebration for these new fuel-efficient cars, and earlier this week at a hearing of the Energy Committee, I was thinking: What if I were to say to you or to anyone I might see, while you are worrying about \$4 gasoline: Did you know that we have enough unused fuel sitting over here, that is not oil, to power 40 percent of our light cars and trucks at a lower cost?

That is right. We have enough unused power every night to power 40 percent of our light cars and trucks. Every night. We can do that by simply plug-

ging them into the wall. I am talking about electric cars and light trucks that almost every major manufacturer is now beginning to make, and we do not have to build one new powerplant to do it.

Last week Senator MERKLEY and I appeared before the Energy Committee to talk about our legislation, the Promoting Electric Vehicles Act. I said to the Committee: The main differences between the bill this year and the one the Committee reported last year by a vote of 19 to 4, a good bipartisan vote, is that the price of gasoline is higher than it was last year and our bill costs less than it did last year.

Encouraging electric vehicles is an appropriate short-term role for the Federal Government. Our legislation establishes short-term incentives for the wide adoption of vehicles in 8 to 15 pilot communities. Our legislation advances battery research. The \$1 billion that we save relative to last year's bill, we save by avoiding duplicating other research programs.

Finally, if you believe that the solution to \$4 gasoline and high energy prices is finding more American energy and using less of it, as I do, electric cars and trucks are the best way to use less.

Electrifying half our cars and trucks can reduce the use of our foreign oil by one-third, saving money on how we fuel our transportation system and cutting into the billions of dollars we send overseas for foreign oil. So instead of making the speech for the rest of my time, let me tell a short story. It is a story of Ross Perot, the famous Texan, and how he made his money.

Back in the sixties, he noticed that the big banks down in Dallas were locking their doors at 5 o'clock, and the banks had all of these big computers in the back room, and they were locking them up too. They were not using them at night.

So Mr. Perot made a deal with the banks. He said: Sell me your unused computer time. And they did at cheap rates. Then he went to the States and talked to the Governors—this is before I was a Governor—and he made a deal with the States to use that cheap computer time to manage Medicaid data. He made \$1 billion.

In the same way, we have an enormous amount of unused electricity at night. A conservative estimate is that we have an amount of energy that is unused at night that is equal to the output of 65 to 70 nuclear power plants between 6 p.m. and 6 a.m. If we were to use that resource to plug in cars and trucks at night, we could electrify 43 percent of our cars and trucks without building one new powerplant. It is a very ambitious goal, to imagine electrifying half our cars and trucks. It would take a long time to do it, but it is the best way to reduce our use of foreign oil.

I suspect that is the greatest unused resource in the United States. What if someone proposed building 60 or 65 nuclear powerplants. Actually, I proposed

building 100. But if we tried to build 60 or 65 more, it would take us 30 or 40 years and cost us \$½ trillion. That is if we could even do it.

Another reason I think this will work is because it is easy for consumers, and I am one. For 2 years, I drove a Toyota Prius, and it had an A123 battery in it. I increased my mileage to about 80 or 90 miles a gallon. I just plugged it in at night at home. Very simple. I now have a Nissan Leaf. It is all electric. I have an apartment nearby the Capitol. I just plug it in at night. I don't even have a charger. I just plug it into the wall, and I can drive it about 2 hours every day and plug it in at night. I have not bought any gas since January, since I got my Leaf in Washington, DC.

I have had no problems, either with the modified Toyota Prius that I drove for 2 years, or with the Nissan Leaf that I have driven now for about half a year. Almost every car company is making electric cars today or will soon have them on the market.

So if the extra electricity is available—and electric vehicles are easy to use, and car companies are making them, then why do we need for the government to be involved? That is a good question. For one thing, it is the urgency of the problem: \$4 gasoline is killing our economy. It is throwing a big wet blanket over it.

The only solution is find more, use less. This is the best way to use less. To my Republican colleagues, I have said before our Committee, and I would say today what we have been saying for 3 years in our caucus: Find more and use less.

We have criticized Democrats for wanting to use less without really wanting to find more, and we are subject to the same criticism if we want to find more—which I think we should—offshore, on Federal lands, and in Alaska, and then we do not have a credible way to use less. Electric cars and trucks are the best way to use less.

Another criticism is that our bill interferes with the marketplace. It does, but in a short-term and limited way. Short-term incentives for new technologies—to jump-start nuclear energy, to jump-start natural gas truck fleets, to jump-start electric cars and trucks in 4 to 5 years—I think are appropriate, given the urgency of the problem. If I am here in 5 years, I will be the first to say this should be the end of it. If I am not, I will come back and argue for its repeal.

Finally, conservative groups across the country have said national security demands that we do this. Gary Bauer, president of American Values, as well as Richard Land, president of the Ethics and Religious Liberty Commission, endorsed our bill last year, saying that national security concerns overwhelm any opposition to it, and it is the best way to displace our use of oil. That was them talking.

Can we afford it? Well, our proposal is \$1 billion cheaper, it is an authorization bill, and we should be setting priorities.

There is some suggestion that this committee should also appropriate the money. I would respectfully suggest that we are in a 2-year period where we have no earmarks because authorizers didn't like appropriators authorizing. Well, let's be consistent and say to authorizers, "You shouldn't be appropriating." Let's just do the job of authorizing. Senator MERKLEY and I have agreed that we will not try to pass this bill when it comes to the floor unless we can agree to do it in a way that does not add to the debt.

So, in summary, I would say it is time to address \$4 gasoline and high energy prices. To do that, we need to find more American energy—offshore, on Federal lands, and in Alaska—but we also need to use less. The single best way to use less is to jump-start the use of electric cars and trucks. Electricity is just a delivery system. The fuel comes from a whole variety of things: natural gas, coal, and other things.

So we jump-start the use of that huge resource that we have just sitting there unused every single night. Our committee approved this bill once before. The problem is worse today than it was when they approved it last year. The bill costs less than it did when they approved it last year. It is an appropriate role for the Federal Government. We will work to make sure if this body were to pass it that it does not increase the debt.

I urge my colleagues to report the bill to the floor and to consider encouraging electric cars and trucks as the single best way to use less energy and reduce the use and reduce the cost of gasoline.

I thank the Senator from Alabama for his courtesy and for listening to my remarks.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

#### ADJOURNMENT RESOLUTION

Mr. SESSIONS. Mr. President, today the Senate declined to vote on whether to recess. Someone said the Republicans blocked the Senate from recessing. That is not correct. Republicans wrote a letter to the majority leader and said we should not recess until we have plans set forth and begin to take action to deal with the budget that we have not passed that is required by law to be passed.

That is what was done. So when it comes down to the moment to move to recess and vote to recess, as we are required to do to have a recess, a unanimous consent, or an actual vote, the majority leader chose not to vote. I guess he wanted to protect his members from having to actually be recorded voting to recess this body when we have not done our work.

The Budget Act, in the United States Code, in the Code book, the Budget Act requires that the Senate commence markup hearings in the Budget Com-

mittee by April 1 and that a budget be produced by April 15. Congress does not go to jail if it is not passed, I will acknowledge. There is no fine. Perhaps there should have been.

Congress writes laws. I guess they make sure that no consequences occur when they apply to them and they do not comply with their duties.

The majority leader decided to keep us in pro forma session through the week but to do it in a way that guarantees we will take no action on a budget. This is a sad thing. It is not a little bitty matter. Our Congress knows we are in a serious national crisis. I think we can't deny it, and we have to figure out how to respond to it.

I hope this letter—and I will make it a part of the RECORD—to the majority leader will have some impact on our colleagues and cause them to reconsider the actions that have been taken so far. This is what it says:

DEAR MAJORITY LEADER REID: Today marks the 757th day since Congress last adopted a conference report on a budget resolution. But while the Republican House has met its obligations this year, the Democrat-led Senate remains in open defiance of the law—last year the Senate did not even call up a budget for a vote and this year the Senate Budget Committee has not even marked up a resolution, as required under Sec. 300 of the Congressional Budget Act of 1974.

Despite this dubious distinction, the Senate plans to adjourn for a week-long recess on Friday to coincide with Memorial Day, a holiday that honors our men and women in uniform. As our service members put their lives on the line to defend this nation, surely the least Congress can do is produce a plan to confront the debt that is placing the whole country at risk. House Republicans put forward just such a budget weeks ago—an honest plan for prosperity to overcome this nation's dangerously rising debt, cut wasteful Washington spending, and make our economy more competitive.

But, in this time of economic danger, the Senate continues to stonewall any and all action on a FY2012 budget. For this reason, we respectfully request that you delay any adjournment of this body until you or members of your party in the Senate bring forward a budget resolution and schedule a meeting of the Budget Committee—a power which resides solely with the majority—to work on that budget.

In an interview last week, you stated, "There's no need to have a Democratic budget in my opinion . . . It would be foolish for us to do a budget at this stage." We find these remarks shocking, especially given the state of our fiscal affairs: the co-chairs of President Obama's own fiscal commission recently warned that, if we do not take swift and serious action to address our rising debt, the United States faces "the most predictable economic crisis in its history."

The House completed its work on the FY2012 budget resolution on April 15th. But no budget can become binding until the Senate acts. In our view it would be an astounding abandonment of responsibility for the Senate to go on recess without having taken any steps to produce a budget. We hope that, as required by law and in your capacity as Majority Leader, you change course and follow the example of the Republican-led House and provide the American people with the honest leadership and the honest budget they deserve.

Until a budget plan is made public, and until that plan is scheduled for committee