

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.

[From the National Review Online, May 16, 2011]

THE NEW NLRB: BOEING IS JUST THE BEGINNING

(By Hans A. von Spakovsky and James Sher)

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