your commission chairman said in a written statement after PAUL RYAN and the House Republicans produced their budget:

> The budget released this morning by the House Budget Committee Chairman PAUL RYAN is a serious, honest, straightforward approach to addressing our nation's enormous fiscal challenges. We applaud him for his work in putting forward a proposal which will reduce the country's deficit by approximately the same amount as the plan of the President's Fiscal Commission.

They also went on to say that if you criticize it, you have a responsibility to offer an alternative.

I say to the Senator, you served with Mr. Bowles. He was a Democratic Chief of Staff to President Clinton and was appointed by President Obama to chair this commission. That does not sound like the things we heard yesterday, attacking the House Ryan budget, does it?

Mr. COBURN. It does not. But it is interesting to note that the President's deficit commission was set up by the President and had six of his nominees on it. It had six Republicans and six Democrats. Five of the six Presidential nominees he nominated agreed with the deficit commission, three of the six Republicans agreed, and three of the Democrats—a pretty good meeting in the middle. Yet the President did not embrace the results of his own commission, did not embrace the results of the people he appointed. So what was the purpose of that exercise? Was it to make political hay or was it to solve the problems?

The fact is, I have five colleagues in the Senate who have been working hard on that over the past 5 months to try to build a bipartisan agreement out of the basis of that. That is what has to happen—except politics.

I go back and just refer to my colleague, if you look at the history of republics, the track record is not very good. The average age of the world's republics is 207 years. That is our average age. We are 27 years past the average. The question is, Can we cheat history? Can we not fall like the rest of the republics over the very same things? They all fell over fiscal issues. They let their spending get out of control, they let their debt get out of control, and then they could not afford the promises they made.

I will say to my colleague, this is not an issue of the budget chairman. This is an issue of the leadership of the Senate that does not want a budget. We ought to be very clear that the American people know that Congress is not doing its job—this body, for sure—because we are not making the hard choices we were sent up here to make. What we are doing is punting. We are going to come to a crisis, and the crisis is going to be painful, and it is going to be much more painful than had we made the hard choices today.

So I want to thank the ranking member of the Budget Committee for his leadership. We can solve any problem in front of us, Mr. Ranking Member, but we have to do it together, and we cannot deny that the problems exist.

Mr. SESSIONS. I thank Senator COBURN for his leadership. I have watched him with admiration over the years with consistency and fidelity for the national interest to work to bring our spending under control.

I see our colleague, Senator ALEXANDER, in the Chamber, and I will yield the floor. I will just follow up, before I do that, with a quote from Erskine Bowles.

When the President announced his budget not long after the deficit commission he called together had made some pretty good proposals about how to improve fiscal matters in the United States, Mr. Bowles was, obviously, deeply disappointed with what the President submitted and said this plan goes ''nowhere near where they will have to go to resolve our [country's] fiscal nightmare.''

I think there is a consensus that we are facing a fiscal nightmare. We are going to have to take some serious steps in that regard.

Mr. President, I think there are some other Members who have reserved time. If there are no other Members here who have reserved time after Senator ALEXANDER completes his remarks, I ask unanimous consent that I be recognized at that time.

Mr. ALEXANDER. Mr. President, I will not object. I say to Senator SESSIONS, I think Senator HATCH is expected to come down. That is the only one I know of.

Mr. SESSIONS. As I said, my consent would be that if anyone has reserved time, they would get it before I will speak.

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

The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I congratulate Senator SESSIONS and Senator COBURN for their principled remarks about the phenomenon of Washington spending. We are borrowing 40 cents of every dollar we spend. We cannot keep spending money we do not have. And we want to save Medicare. So those two major difficult decisions are things that we need to work on together—to stop spending money we do not have and saving Medicare. We can do both if we put our minds to it.

Mr. President, I ask unanimous consent to speak for up to 15 minutes.

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

Mr. ALEXANDER. Mr. President, if you would let me know when 1 minute remains, I would appreciate it.

JOB PROTECTION ACT AND THE NLRB

Mr. ALEXANDER. Mr. President, last month the Acting General Counsel of the National Labor Relations Board (NLRB) filed a complaint against the nation's largest exporter, the Boeing company—a company with 170,000-some employees, 150,000 of which in the United States, who sells airplanes around the world and makes them in the United States. The complaint basically said there was prima facie evidence of illegal discrimination because Boeing has decided to expand and build a production plant in South Carolina. Boeing's main operation is in Washington State, a State without a right-to-work law. In contrast, South Carolina is a State with a right-to-work law. This is notwithstanding the fact that Boeing has already added 2,000 employees in Washington State since announcing its expansion. At the same time, it has nearly finished this new plant in South Carolina, spending $1 billion, hiring 1,500 construction workers and over 500 employees to work in the facility. Then, all of a sudden, here comes this complaint.

This is not just a South Carolina matter. It affects the entire country and many of us have spoken out about it. I want to review it just for a moment.

This complaint against Boeing is just one indication of the Administration's anti-business, anti-growth, and anti-jobs agenda. That is why Senators GRAHAM, DEMINT, and I—actually there are 35 Senators who are cosponsoring this bill—have introduced the Job Protection Act, to protect right-to-work states and employers from an independent government body run amok.

Our bill preserves the Federal law's current protection of state right-to-work laws in the National Labor Relations Act and provides necessary clarity to prevent the NLRB from moving forward in its case against Boeing or attempting a similar strategy against other companies.

Now it seems the NLRB wants to change the rules governing how and when a company can relocate from one State to another. According to a May 10 internal memorandum from the NLRB General Counsel's Office, they want to give unions power over major business decisions and require companies, such as Boeing, to collectively bargain if it wants to relocate a facility.

As was explained by James Sherk, a senior policy analyst in labor economics, and Hans A. Von Spakovsky, a senior legal fellow at the Heritage Foundation, in a recent article in National Review Online:

> 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. . . . Either way, businesses would have to negotiate their investment plans with union bosses.

Sherk and von Spakovsky describe this as a ''heads I win, tails you lose'' scenario for unions. These decisions belong in the corporate boardroom, not at the collective bargaining table.

The goal of this NLRB is to place the interests of organized labor over those of business, shareholders, and economic growth. Their means is to change well-

established law governing business decisions under the National Labor Relations Act.

The Supreme Court has reasoned that ''an employer must have some degree of certainty beforehand as to when it may proceed to reach decisions without fear of later evaluations labeling its conduct an unfair labor practice. Under the Dubuque Packing case and subsequent NLRB jurisprudence, a company may make a major business decision, such as relocation, outside of collective bargaining. Accordingly, the burden is initially on the NLRB's General Counsel to establish that an employer's decision to relocate work is unaccompanied by a basic change in the nature of the employer's operation, such as being part of an overarching restructuring plan.

The Dubuque test was most recently applied by the NLRB in holding that an employer, Embarq Corporation, did not violate the law by refusing to provide information about or bargain over a planned relocation of its Nevada call center to Florida. Both of those happen to be right-to-work States, as Tennessee is.

In a concurring opinion, NLRB Chairman Liebman expressed her desire to change the rules governing relocation decisions and collective bargaining. The Chairman noted her displeasure that, in her words, ''the law does not compel the production of'' information fully explaining the underlying cost or benefit considerations of a company's relocation decision. The Chairman then suggested requiring employers to provide unions with economic justification wherever there was a ''reasonable likelihood'' that labor-cost concessions might affect an impending decision to relocate.

In practice, the burden would shift to the employer, before making its relocation, to advise and explain to its union the basis for its decision, supported by detailed economic justification. Then, if it does turn on labor costs, the employer would be required to provide the union with information supporting the labor cost/savings underlying its decision. If the employer failed to provide such information and labor costs were a factor, it would be precluded from making those decisions without collective bargaining.

Following this decision against Embarq Corporation, the NLRB Associate General Counsel issued an internal memorandum on May 10 suggesting that Chairman Liebman's new test should now be examined and considered in all cases concerning relocations that come before the board.

Now, I am all for requiring employers to provide advance notice to their labor organizations and offering the economic reasons for a proposed relocation, a shutdown, or a transfer of existing or future work. Providing notice and reasoning is already required under existing law and jurisprudence. We included this in our Job Protection Act to make sure the spirit of the law was maintained. But, what the NLRB and Associate General Counsel are now proposing goes much further, changes understood law, and places an unreasonable burden on employers.

As was observed by Sherk and Spakovsky, this new test would raise the costs to businesses by dragging on collective bargaining, by preventing them from legally executing a decision that is in the best interests of their shareholders until bargaining hits an impasse, and by forcing them to provide detailed economic justification and negotiate their investment plans with union bosses before having the right to execute a relocation plan. Effectively, it would give a union a seat at the board of directors through the force of law and tip the scales of justice in their favor. If employers do not comply, then they will lose the right to later claim their relocation decision did not have to be collectively bargained under the National Labor Relations Act.

So as with the NLRB Acting General Counsel's action against Boeing, this potential new posture by the Office of the General Counsel represents a departure from well-established law. They do not like the outcome, so they want to change the rules and give unions greater leverage over their employers, who provide the jobs in the first place. They are more concerned about producing outcomes that facilitate the collective bargaining process, rather than those that foster economic growth, exports, and jobs.

Those decisions are best left to the owners, officers, shareholders, and directors of businesses, not organized labor or the Federal Government. This potential change in well-established law would be another blow to manufacturing growth and expansion in the United States and further incentive for manufacturers to expand or open a new facility in Mexico, in China, or in India to meet their growing need.

Republicans are not the only ones who are outraged by the direction the NLRB seems to be headed. William Gould, who chaired the NLRB during the Clinton administration, was recently quoted in Slate magazine expressing his unease with the board's action. Specifically, he said, ''The Boeing case is unprecedented,'' and he ''doesn't agree with what the [Acting] General Counsel has done [by] . . . trying to equate an employer's concern with strikes that disrupt production and make it difficult to meet deadlines . . . with hostility toward trade unionism.'' That is the Clinton Administration's NLRB General Counsel.

Coming back to the Boeing issue, which is set to be heard by an administrative judge on June 14, recent comments in the press from an NLRB spokeswoman shed further light on how the board's agenda flies in the face of the very concept of capitalism.

On May 19, various press outlets quoted this spokeswoman suggesting that the NLRB Acting General Counsel would drop his case against Boeing if the company agreed to build 10 planes in Washington, rather than 7. Specifically she said:

> We are not telling Boeing they can't build planes in South Carolina. We are talking about one specific piece of work: three planes a month. If they keep those three planes a month in Washington, there is no problem.

So they can build planes in South Carolina, just not the three they had planned. So now the Federal Government or the NLRB is sitting on Boeing's board and determining the means of production for American industry while the economy continues to struggle. In Tennessee, we have had 24 months of 9 percent unemployment.

Our job is to make it easier and cheaper for the private sector to create jobs. The NLRB is not acting in the best interests of American workers through its continued attempts to depart from well-established law and dictate integral business decisions to companies.

I ask unanimous consent to have printed in the RECORD a memorandum from the Associate General Counsel of NLRB, dated May 10, as well as an article from National Review Online, dated May 16.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OFFICE OF THE GENERAL COUNSEL,
DIVISION OF OPERATIONS-MANAGEMENT
May 10, 2011.

MEMORANDUM OM 11–58

To: All Regional Directors, Officers-in-Charge, and Resident Officers.

From: Richard A. Siegel, Associate General Counsel.

Subject: Submission to Advice of Information Cases in Relocation Situations.

In Embarq Corp., 356 NLRB No. 125 (2011), the Board held that the Employer did not violate Section 8(a)(5) by refusing to bargain with the Union over its decision to close a call center in Nevada and relocate that work to its call center in Florida. Applying Dubuque Packing Co., 303 NLRB 386 (1981), enforced in pertinent part, 1 F.3d 24 (D.C. Cir. 1993), cert. denied, 511 U.S. 1138 (1994), the Board found that, although the decision did not involve a change in the scope or direction of the enterprise, and labor costs were a factor, the relocation was nevertheless not a mandatory subject of bargaining because the Union could not have offered labor-cost concessions sufficient to alter the Employer's decision. The Board also dismissed an allegation that the Employer had violated Section 8(a)(5) by refusing to provide information relevant to its relocation decision; since the decision was not a mandatory subject of bargaining, there was no obligation to provide information about it.

In a concurring opinion, however, Chairman Liebman suggested that she would consider modifying the Dubuque Packing framework with regard to information requests if a party were to ask the Board to revisit existing law in this area. Specifically, she identified an anomaly in present law, which provides somewhat inconsistently that: (1) an employer would enhance its chances of establishing that labor-cost concessions could not have altered the decision, under the Dubuque Packing standard, ''by describing its reasons for relocating to the union, fully explaining the underlying cost or benefit considerations, and asking whether the union

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

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 relocate 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 NRLB'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 plugging 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