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THE “WALKAWAY SHOP”: LONG-TERM UNION
AVOIDANCE AND MANAGEMENT DECISIONS TO OPEN
NEW FACILITIES AS LAWFUL CONDUCT UNDER THE
NATIONAL LABOR RELATIONS ACT

This Comment addresses whether an employer’s long-term union avoidance as embodied in capital allocation decisions constitutes or should constitute an unfair labor practice. On April 20, 2011, the National Labor Relations Board issued a complaint against Boeing alleging that the company violated the National Labor Relations Act when it “transferred” a production line from Washington State to a new, non-union facility in South Carolina. The complaint alleged, in part, that Boeing’s conduct in relation to this “transfer” discouraged membership in a labor organization and ignited a controversy over the NLRB’s role in dictating management decisions and the type of behavior that should be prohibited under the NLRA.

The purpose of this Comment is to develop a framework for determining when management decisions to create new work should be considered unlawful under the NLRA. The Comment explains why Boeing did not transfer work from one facility to another and suggests that a management decision to create new work should not be considered violative of the NLRA unless the decision is made with the purpose of discouraging union activity. The Comment concludes by arguing that union avoidance should not be per se unlawful and suggests that management conduct should be analyzed under a modified version of the test for partial closings. These suggestions acknowledge the premise behind the NLRA that unions have a place in our society while cautioning that determining whether management has violated the Act requires proper classification of management conduct. Underlying the arguments made in this Comment is the premise that certain decisions, such as where to locate new work, should be firmly management’s to make.

Explaining how union avoidance should be analyzed, this Comment distinguishes long-term union avoidance from “runaway shops” and classifies such avoidance as a “walkaway shop.” The label, “walkaway shop,” is intended to distinguish long-term union avoidance from conduct that is currently unlawful under the NLRA. In so doing, this Comment seeks to provide a simple conceptualization of management decisions in order to serve as a practical guide for what conduct is unlawful under the NLRA. Thus,

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an appropriate balance between employer and employee rights exists when employers are permitted to make capital allocation decisions and employees receive protection from employer conduct that is intended to stifle protected Section 7 activity.

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