

Taking a Deeper Look at the Implications of the NLRB Declaring Captive-Audience Meetings Unlawful

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On November 13, 2024, the National Labor Relations Board (NLRB) issued a decision in *Amazon.com Services LLC*, holding that “captive-audience meetings” are unlawful under the National Labor Relations Act (NLRA). This decision reverses 76 years of precedent, which permitted employers to hold such meetings.

Captive-Audience Meetings

Captive-audience meetings are mandatory meetings occurring during work time, where employers share their views on unionization. During these meetings, employers attempt to counter any misinformation employees may have received from unions prior to secret ballot elections.

In 1947, Congress passed the Taft-Hartley Act, which amended the NLRA. One such amendment to the NLRA was Section 8(c), which provides that an employer can express its views on unionization to employees without being subject to an unfair labor practice, provided that the expression of such view does not contain a “threat of reprisal or force or promise of benefit.”

The following year, in *Babcock & Wilcox Co.*, the Board held that an employer can lawfully require its employees “to attend a meeting during which it expressed its antiunion views.” The *Babcock* precedent is based largely on Section 8(c) of the Act, which was part of multiple amendments made in the 1947 Taft-Hartley Act. Section 8(c) provides:

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

Amazon.com Services LLC Decision

In this matter, the Board decided to overturn *Babcock & Wilcox*, concluding that captive-audience meetings violate Section 8(a)(1) of the NLRA. The Board found that such meetings “have a reasonable tendency to interfere with and coerce employees in the exercise of their Section 7 right to freely decide whether or not to unionize, including their right to decide whether, when, and how they will listen to and consider their employer’s views concerning that choice.”

In reaching its decision, the Board stated that captive-audience meetings interfere with employee’s rights under Section 7 of the NLRA by:

- Impinging on an employee’s ability to freely decide whether to unionize;
- Enabling employers to observe and surveil employees as they express their views on unionization; and
- Conveying to employees that the employer controls their participation in union election campaigns.

Safe Harbor

Notably, the Board’s decision does not prohibit an employer from holding a voluntary meeting in the workplace during work time. The decision provided guidance regarding a safe harbor for employers who wish to express their views on unionization.

Employers can avoid liability under the NLRA if, reasonably before the meeting, they inform employees that:

- The employer intends to express its views on unionization at a meeting at which attendance is voluntary;
- Employees will not be subject to discipline, discharge, or other adverse consequences for failing to attend the meeting or for leaving the meeting; and
- The employer will not keep a record of which employees attend, fail to attend, or leave the meeting.

Employers that provide and follow through on the aforementioned assurances to employees are lawfully permitted to hold voluntary meetings with employees to express their views on unionization. Any failure to give the aforementioned assurance will not itself violate Section 8(a)(1).

Implications for Employers

Unlike many recent Board decisions, which apply to all pending cases, this decision will apply only prospectively from the date of the decision. It remains to be seen what will happen to this decision as a result of the recent election.

This decision reflects another example of the back-and-forth nature of Board decisions and is one in a string of rulings where long-standing precedent is discarded. It is becoming increasingly difficult for employers to comply with and anticipate changes in Board law. So, for now, employers are best advised to refrain from captive-audience meetings and comply with the directives stated in the decision.

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