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In a Blow to Employers' Ability to Defend Against Union Organizing Drives, NLRB Outlaws Mandatory Captive Audience Meetings

On November 13, the National Labor Relations Board (Board) issued its decision in *Amazon.com Services LLC*, which outlaws mandatory "captive audience" meetings, a tool traditionally used by employers to express their views on unionization to employees. The Board's decision overturns its 1948 ruling in *Babcock & Wilcox Co.*, where the Board held that an employer that compels its employees during work hours to attend captive audience meetings does not violate employees' rights under Section 8(a)(1) of the National Labor Relations Act (NLRA or Act). Considering this change in long-standing precedent, the Board stated that its prohibition will only apply prospectively to accommodate the reliance employers may have put on the 76-year precedent. The Board's decision now bans one of the most effective tools employers had against labor organizing campaigns. Given the incoming Republican presidential administration in January 2025, however, the effects of the Board's decision may be short-lived.

The Board's Decision to Ban Mandatory Captive Audience Meetings

In *Amazon.com Services LLC*, the Board reconsidered whether an employer violates Section 8(a)(1) of the NLRA, which prohibits employers from interfering with, restraining or coercing employees in the exercise of their rights under the NLRA, by compelling its employees, under threat of discipline or discharge, to attend a meeting where the employer expresses its views on unionization. The issue arose when, in April 2021, a group of employees founded the Amazon Labor Union and began organizing at two warehouses in Staten Island, New York. During those organizing campaigns, the employer (Amazon) held several mandatory meetings during work hours in which it urged its employees to reject union representation. Managers personally notified employees that they were scheduled to attend these meetings, escorted them to the meetings, and scanned their ID badges to digitally record attendance. An administrative law judge, relying on the Board's decision in *Babcock & Wilcox Co.*, found that Amazon's requirement that employees attend captive audience meetings or face discipline or discharge was lawful. The administrative law judge's ruling then went to the Board for review.

On exception, General Counsel Jennifer Abruzzo argued that the Board should overturn its previous decision in *Babcock & Wilcox Co.* and find that an employer violates Section 8(a)(1) of the Act by mandating employee attendance at meetings where the employer expresses its views on unionization. The Board ultimately sided with the General Counsel's interpretation of the Act, finding that while Section 8(c) of the Act permits employers to express their views on unionization in a noncoercive manner, it does not permit employers to compel employees to listen to such views. The Board also found, despite the dissent from Republican Board member Marvin Kaplan, that while the First Amendment of the U.S. Constitution protects an employer's right to free expression, it does not grant the right to have captive audiences, nor does it authorize employer coercion in a labor relations setting.

Interpreting Section 7 of the Act, which generally provides that employees have a right to self-organize, form, join or assist labor organizations and bargain collectively through their chosen representatives, the Board found that captive audience

meetings "intrude on th[e] protected sphere of employee privacy and autonomy and reasonably tend to interfere with employees' exercise of Section 7 rights" in three ways. First, the Board found that captive audience meetings impinge on an employee's Section 7 right to choose, free from employer coercion, the degree to which the employee will participate in the debate concerning union representation. Second, the Board found that captive audience meetings can serve as a mechanism for employers to observe and surveil employees as they address the employees' exercise of rights under Section 7. Third, the Board found that because employees are compelled to attend captive audience meetings on pain of discipline or discharge, the employer's message in the meeting to reject or support the union "is reasonably likely to take on a similarly coercive character." For the same reasons stated above, the Board similarly found that mandatory captive audience meetings where an employer expresses support for employee unionization also violate employees' rights under Section 8(a)(1) of the Act.

Voluntary Meetings May Be Acceptable in Limited Circumstances

While the Board's decision makes clear that mandatory captive audience meetings are now prohibited under Section 8(a)(1) of the NLRA, the Board clarified that voluntary meetings held in the workplace during work hours may not violate the Act if such meetings do not implicate an employer's use of power to compel employee attendance. The Board held that an employer will not be found to have violated Section 8(a)(1) of the Act if "reasonably in advance of the meeting" the employer informs employees of the following: (1) the employer intends to express its views on unionization at a meeting where employee attendance is voluntary; (2) employees will not be subject to discipline, discharge or other adverse consequences for not attending the meeting or for leaving the meeting early; and (3) the employer will not keep records of which employees attend, fail to attend or leave such meetings early. Previously, the Board had permitted employers to strictly control employees during captive audience meetings conducted more than 24 hours in advance of an election. Nevertheless, in this decision, the Board went on to clarify that "[a]n employer will be found to have compelled attendance at a meeting concerning the employer's union views if, under all the circumstances, employees could reasonably conclude that attendance at the meeting is required as part of their job duties or could reasonably conclude that their failure to attend or remain at the meeting could subject them to discharge, discipline, or any other adverse consequences."

The Bottom Line

The Board's latest decision overturns 76 years of precedent allowing employers to hold mandatory captive audience meetings to express their views on employee unionization and, in turn, removes one of the most effective tools employers had to combat union organizing campaigns. Employers now must exercise extreme diligence when holding employee meetings to express their views on unionization, ensuring not only that attendance by employees at such meetings is voluntary, but also that the other steps laid out by the Board for such meetings are adhered to. This decision is a concern to employers whose workforces are at risk of being organized by a labor union, especially in light of the fact that union election petitions have spiked over the last few years (the number of election petitions filed in fiscal year 2024 was up 27% over those filed in fiscal year 2023 and almost double number filed in fiscal year 2021). Despite this major blow to employers' ability to combat union organizing campaigns, an incoming Republican presidential administration could mean that employers will regain the ability to hold mandatory captive audience meetings at some point within the next four years. In the meantime, employers should confer with labor counsel and consider whether and how to hold employee meetings to express their views on unionization, as such meetings could violate the NLRA even if employee attendance is voluntary.

Authors

Francine Esposito

Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com

Rachel A. Gonzalez

Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com

Jonathan E. Kohut

Associate

Parsippany, NJ | (973) 966-8116

jkohut@daypitney.com