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NLRB Delivers Ban on Captive-Audience Meetings in Amazon Case

Labor Relations Update on **November 14, 2024**

Throwing out **75** Years of precedent in a single decision, on November 13, 2024, in *Amazon.com Services LLC*, the National Labor Relations Board (the "Board") the Board overruled the seminal case of *Babcock & Wilcox Co.*, 77 NLRB 577 (1948) and held that, going forward, employers violate the National Labor Relations Act (the "Act") if they require employees "to attend a meeting at which the employer expresses its views on unionization," commonly known as "captive-audience meetings."

The Board's Decision

In a case that has been on the docket for years now, the Board, rejecting the long-standing precedent, held that captive-audience meetings violate Section 8(a)(1) of the Act "because they 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 the right to decide whether, when, and how they will listen to and consider their employer's views concerning that choice." The Board noted that requiring employees to attend such meetings is unlawful "regardless of whether the employer expresses support for or opposition to unionization." Rather, the violation hinges on the employer's power to compel employees to attend such a meeting.

The Board's decision was rooted in three concerns:

- First, the Board found that captive-audience meetings inhibit employees' right to freely choose the degree to which they will participate in a debate about union representation.
- Second, the Board reasoned that captive-audience meetings provide "a mechanism for employers to observe and surveil employees as the exercise of their Section 7 rights is addressed."
- Finally, the Board noted that because employers can mandate workers' attendance at such meetings "on pain of discipline or discharge," the employer's anti-union message at the meeting would likely be similarly coercive: "[j]ust as employees may reasonably conclude that they have no real choice but to attend the meeting,

> so may employees reasonably conclude that, in fact, they do not have free choice concerning union representation." In its analysis, the Board focused on employers' "economic power" over employees, which it found "reasonably tends to inhibit [employees] from acting freely."

Meetings Permissible Under the Act

The Board clarified that it will provide a "safe harbor" from liability for employers who want to express their views on unionization in a "workplace, work-hours meeting with employees" under certain conditions. Going forward, it will be permissible under Section 8(a)(1) for an employer to hold meetings with employees in the workplace, so long as the employer gives reasonable notice to employees in advance of the meeting that (1) the employer intends to express its views on unionization at the meeting and attendance is voluntary, (2) employees will not be subject to discipline, discharge, or other adverse consequences for failing to attend the meeting or for leaving the meeting, and (3) the employer will not keep records of which employees attend, fail to attend, or leave the meeting.

An employer will be found to have compelled attendance at a meeting in violation of the Act if "under all the circumstances, employees could reasonably conclude that attendance at the meeting is required as part of their job duties or…that their failure to attend or remain at the meeting could subject them to discharge, discipline, or any other adverse consequences." The Board concluded that an "express order from a supervisor, manager, or other agent of the employer" to attend such a meeting would be sufficient, but not necessary, to establish a violation of Section 8(a)(1). For example, if a supervisor included attendance at the meeting on an employee's work schedule, the meeting would be deemed compulsory for purposes of the Act.

Takeaways

This union-friendly ruling is a big blow to employers, as captive-audience meetings are one of employer's most powerful tools against labor organizing. For the time being, under this current Board and General Counsel Jennifer Abruzzo, employers are no longer permitted to compel captive-audience meetings with their employees to express their views on unionization. Now, any such meetings must be voluntary and will be subject to the notice obligations described above.

However, the Board's ruling may be short-lived when President-elect Trump tilts the Board back to a Republican majority. It is highly likely that restoring this long-standing tool for employers will be high on the agenda.

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