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NLRB OUTLAWS CAPTIVE AUDIENCE MEETINGS

On November 13, 2024, the National Labor Relations Board ("NLRB") issued a decision in *Amazon.com Services LLC*, ruling that an employer violates Section 8(a)(1) the National Labor Relations Act ("the Act") by requiring employees, under threat of discipline or discharge, to attend meetings in which the employer expresses its views on unionization, which are also referred to as "captive-audience meetings." The ruling overturns the Board's 1948 ruling *in Babcock v. Wilcox Co.*, that employers are permitted to hold mandatory captive-audience meetings during work hours as long as employees were not threatened, interrogated, punished, or promised benefits. Employees may now decline to attend captive-audience meetings in the absence of assurances from the employer that attendance is voluntary, as employees now have Section 7 rights not to attend.

The underlying facts in the *Amazon.com* case concerned a union organizing campaign at two Amazon fulfillment centers. Amazon held a series of meetings where the company made statements opposing union representation generally and this union specifically. Managers personally notified employees that they were scheduled to attend the meetings, escorted them to the meetings and scanned their ID badges to digitally record attendance. Pursuant to *Babcock*, the administrative law judge dismissed the workers' allegations that these meetings were unlawful.

The NLRB found that mandatory captive-audience meetings interfere with an employee's right to freely decide whether, when, and how to participate in a debate concerning union representation, or refrain from doing so, under Section 7 of the Act. The NLRB also found that mandatory captive-audience meetings provide a mechanism for an employer to observe and surveil employees, again in violation of the employee's Section 7 rights. Finally, the NLRB found that an employer's ability to compel attendance at such meetings when an employee is under threat of discipline or discharge lends a coercive character to the message regarding unionization that employees are forced to receive.

The NLRB held it will find that an employer has violated the Act if, under all the circumstances, employees could reasonably conclude (1) that meeting attendance was required as part of their job duties; or (2) that their failure to attend or remain at the meeting could subject them to discipline, discharge or other adverse consequences. An express "order" from a supervisor, manager or other agent of the employer, including placing a meeting on an employee's work schedule, is sufficient, but not necessary, to establish unlawful coercion.

The NLRB's decision provided for a "safe harbor" for conducting voluntary meetings in the workplace on work time. An employer may still lawfully hold meetings with workers to express its views on unionization, if reasonably in advance of the meeting, it informs employees that: (1) the employer intends to express its views on unionization at a meeting at which 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.

The NLRB expressly declined to address circumstances other than captive-audience meetings, including unscheduled one-on-one encounters between employees and agents of the employer. Thus, it remains unclear whether an employer's agent may express views about unionization in a one-on-one meeting without first communicating the safe harbor information or otherwise indicating that the meeting is voluntary.

In Illinois, the state legislature had recently passed, and Governor Pritzker had signed into law, SB3649, commonly known as the Worker Freedom of Speech Act. This Act, set to take effect on January 1, 2025, prohibits employers from disciplining, discharging, penalizing, or threatening to discipline, discharge, or penalize employees for refusing to attend mandatory employer-sponsored meetings in which the employer communicates its opinion about religious or political matters. The Act defines "political matters" to include "the decision to join or support…any labor organization." The Act also prohibits employers from incentivizing employees to attend such meetings by providing a positive change in any employment condition based on attendance. The Illinois Policy Institute has challenged that Act in federal court, arguing that it violates employers' First Amendment speech rights and that it is preempted by the NLRA. It is unclear what impact the Board's decision in *Amazon.com* will have on those legal challenges to this Illinois law. However, unless and until both the NLRB reverses itself and the federal court enjoins the Worker Freedom of Speech Act, workers will continue to be protected from these inherently coercive anti-union captive audience meetings.

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