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NLRB Bans Mandatory Captive Audience Meetings

BY JEFFREY A. RISCH

SINCE 1948, EMPLOYERS COULD lawfully require employee attendance at *on the clock* captive audience meetings, even under threat of discharge or discipline. That changed this week as the National Labor Relations Board (NLRB), in Amazon.com Services LLC and Dana Joann Miller and Amazon Labor Union, November 13, 2024, outright banned **mandatory** meetings at which an employer expresses its views on unionization and educates workers on the good, bad, and ugly of union membership ("captive audience meeting"). The NLRB held that mandatory captive audience meetings constitute an automatic unfair labor practice that violates section 8(a)(1) of the National Labor Relations Act (NLRA).

The NLRB clarified that requiring employees to attend such meetings is unlawful regardless of whether the employer expresses support for or opposition to unionization. To be clear, the NLRB **did not** ban **voluntary** captive audience meetings.

Taking a step back, unions **do not** have a legal obligation to share key information to prospects (*i.e.,* financial data about the union, how it spends members' money, or penalties for members violating its bylaws/rules). *They can also lawfully mislead workers and provide false information while making promises they cannot possibly follow through on*. Examining labor organizations under a microscope and educating the worker on the *fine print* leads to a more informed voter. This is why it was left to the employer to educate the workforce on ins and outs of becoming part of a particular labor union. This practice was lawful in the private sector for generations and expressly recognized under section 8(c) of the NLRA, provided employees were free from unlawful threats, interrogation, surveillance, or promises.

Of course, an employer's speech and viewpoint is protected under the First Amendment, section 8(c) of the NLRA, and Supreme Court precedent. But, in reversing its precedent, the NLRB reasoned that while the NLRA gives employers the right to "noncoercively" express their views and opinions on unionization, it does not give them the right to force employees to listen to them on company time. The NLRB further reasoned that captive audience meetings infringe on employees' rights to privacy and autonomy under the NLRA because at the meetings, employees can be surveilled and observed, prohibited from speaking, or even dismissed by their employer.

Of particular significance is the dissenting opinion from Board Member Kaplan, who argued that the NLRB's decision to ban mandatory captive audience meetings goes against the NLRA's policy of promoting and encouraging free debate in the workplace and raises serious First Amendment concerns. Kaplan also argued that there is no meaningful distinction between an employer distributing literature during a union campaign, which does not violate the NLRA, and attendance at a captive audience meeting.

Interestingly, the NLRB established a safe harbor from liability for employers who wish to express their views concerning unionization during working hours. An employer will not be found in violation of the NLRA 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's decision to ban mandatory captive audience meetings may be short lived depending on what actions, if any, newly-appointed NLRB members under the Trump Administration take and/or what happens on possible appeal. Even assuming the NLRB's decision stands, employers are not without recourse. They need to carefully navigate these new waters to properly educate the workforce. ■

Jeffrey A. Risch is a partner at Amundsen Davis. As co-chair of the firm's expansive management-side Labor and Employment Service Group, Jeff oversees a team providing comprehensive counsel to employers across the country.

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