LEGAL UPDATES

PUBLISHED: NOVEMBER 14, 2024

NLRB Curtails Employers' Ability to Advocate to Remain Union Free: Long-Standing Precedent Rebuked

Services

Labor & Employment

Traditional Labor Relations

Professionals

JON E. ANDERSON
MADISON:
608.234.6016
MINNEAPOLIS:
612.852.2700
JON.ANDERSON@
HUSCHBLACKWELL.COM

TRECIA MOORE
KANSAS CITY:
816.983.8000
TRECIA.MOORE@
HUSCHBLACKWELL.COM

On November 13, the National Labor Relations Board (NLRB) issued a decision in *Amazon.com Services LLC*, 373 NLRB No. 136 (2024) ruling that an employer violates the National Labor Relations Act by requiring employees under threat of discipline or discharge to attend "captive audience meetings" in which the employer expresses its views on unionization. This decision directly overrules *Babcock & Wilcox Co.*, 77 NLRB 577 (1948), a ruling issued over 75 years ago.

The history

The ruling was anticipated. In her April 2022 GC Memo 22-04, NLRB General Counsel Jennifer Abruzzo stated employers requiring employee attendance at such meetings violated employee rights guaranteed by Section 7 of the act. She also provided notice of her intent to urge the board to address this issue, making sure employees are not put into a situation of being "deprived of their statutory right to refrain [from attending such meetings], and instead are compelled to listen by threat of discipline, discharge, or other reprisal—a threat that employees will reasonably perceive even if it is not stated explicitly…"

Why the board found captive audience meetings unlawful

In *Amazon* the board explained that such meetings—commonly known as "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 rights.

The board offered several reasons why captive audience meetings interfere with employees' rights under the act, thus violating Section 8(a)(1), including

interference with an employee's Section 7 right to freely decide whether, when, and how to participate in a debate concerning union representation, or to refrain from doing so. Additionally, the board held a captive audience meeting provides a mechanism for an employer to observe and surveil employees. Lastly, an employer's ability to compel attendance at such meetings on pain of discipline or discharge lends a coercive character to the message regarding unionization that employees are forced to receive.

What can employers do to ensure meetings about unionization are lawful?

The board did make clear that an employer may lawfully hold meetings with workers to express its views on unionization so long as workers are provided reasonable advance notice of:

1. the subject of any such meeting,
2. that attendance is voluntary with no adverse consequences for failure to attend, and
3. that attendance records of the meeting are not kept.

As always, state laws concerning captive audience meetings, if any, should also be reviewed prior to holding any such meetings.

What's next?

Although the ruling will be applied prospectively, this decision substantively weakens an employer's free speech rights under Section 8(c) of the act, which provides that an employer's communication with its employees won't violate the act "as long as the communications do not contain threats of reprisals, threats of force, or promises of benefits." This decision continues the GC's attack on employer rights and undermines the express language of Section 8(c) and the intent of Congress.

Whether the courts will enforce the new ruling remains to be seen. The Trump administration could make appointments which might help mitigate the impact of this ruling. It is likely there will be a new GC appointed early next year with different enforcement priorities. In addition, the term of the current board chair, Lauren McFerran, expires on December 16, 2024. Her reappointment has not been decided but also is not likely given the upcoming administration transition. Clearly this is not the last time we will hear about captive audience meetings.

Contact us

If you have questions about how this decision may impact your organization, contact Jon Anderson, Trecia Moore, or your Husch Blackwell labor attorney.