Legal Update Article

Clear the Calendar: NLRB Restricts Captive Audience Meetings

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Takeaways

- The Board overturned longstanding precedent that permitted employers to hold mandatory captive audience meetings during union election campaigns.
- Employer-held mandatory captive audience meetings will now be unlawful unless employers meet specific "safe harbor" requirements when conducting group meetings.
- The new standard applies only to future cases, not retroactively.

Related link

- NLRB Overrules Standard on Employer Predictions for How Unionizing Impacts Employer-Employee Relationship

Article

In a landmark decision, the National Labor Relations Board has significantly altered the landscape of employer free speech rights by restricting the use of mandatory "captive audience" meetings. 373 NLRB No. 136 (Nov. 13, 2024). The decision marks a pivotal shift in how employers can communicate with their employees about unionization and other labor-related issues.

Captive Audience Meetings

More than 70 years ago, the Board ruled in *Babcock v. Wilcox Co.*, 77 NLRB 577 (1948), that employers are permitted under the National Labor Relations Act to hold captive audience meetings during work hours to express their views on labor organizations.

Under *Babcock*, an employer could hold mandatory employee meetings on work time to express its views to employees about unionization. As long as employees were not threatened, interrogated, punished or promised benefits, these captive audience meetings have long been permitted under Section 8(c) of the Act.

The captive audience rule has been a useful tool for employers in messaging employees, especially in view of the Board's regulation of employer speech. While union communications (which often include promises of greater benefits and higher wages) are largely unregulated, employers cannot make promises of improvements and are largely prohibited from discussing employee grievances. Thus, the *Babcock* Board did not find an inherent violation in captive audience meetings.

New Standard

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Labor Relations

The Board's decision to restrict captive audience meetings stems from a newly reached conclusion that such meetings have an inherent reasonable tendency to coerce employees and infringe upon their right to organize protected by Section 7 of the Act. The Board concluded that compelling employees to attend such meetings, under threat of discipline or discharge, interferes with their right to freely decide whether to unionize, "including the right to decide whether, when, and how they will listen to and consider their employer's views concerning that choice."

Accordingly, under the new standard, employers are prohibited from requiring employees to attend meetings where the employer expresses its views on unionization. This prohibition applies regardless of whether the employer's message is for or against unionization. Key is the employer's "use of its power" to compel attendance, which the Board finds "reasonably tends to inhibit [employees] from acting freely."

"Safe Harbor" for Voluntary Meetings

Importantly, the Board's new rule does not stop employers from communicating with employees about unionization in a lawful, noncoercive manner. While an employer can no longer require employees to attend a meeting where the employer expresses its views on unionization, the Board provided a "safe harbor" for conducting voluntary meetings, in the workplace on work time.

Under the "safe harbor," an employer may 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.

An employer, the Board said, "may avail itself of this 'safe harbor' by giving employees these assurances." The Board did not provide guidance on what may constitute reasonable advance notice.

Nonetheless, employers will be found to have unlawfully 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."

For example, the Board noted that an express order from a supervisor or manager to attend such a meeting could establish a violation. Moreover, "attendance at a meeting that is included on employees' work schedules, as communicated by a supervisor, manager or other agent of the employer, will be considered to be compelled."

Next

Although some states have previously enacted laws containing restrictions on captive audience meetings, the Board's decision represents a major change in labor relations. Employers must ensure that any group discussions about unionization are conducted in a manner that does not interfere with employees' rights and are free from coercion. Compliance with the Board's "safe harbor" guidelines will be critical.

Additionally, employers must also ensure that, apart from holding a lawful meeting, their conduct and statements made during any meetings are in compliance with changing Board law.

Please contact a Jackson Lewis attorney with questions about this and other Board decisions.