



Labor & Employment @lert

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NLRB Bans Captive-Audience Meetings

On November 13, the National Labor Relations Board (NLRB) issued a major decision in *Amazon.com Services LLC*, banning the practice of “captive-audience meetings,” where employers mandate that employees attend meetings during which management expresses their views on unionization. This ruling overturns the landmark *Babcock & Wilcox Co.* decision, 77 NLRB 577 (1948), which had allowed employers to hold such meetings for more than 75 years.

Babcock & Wilcox Precedent

In 1947, Section 8(c) of the National Labor Relations Act (NLRA) was enacted to protect employers’ rights to communicate their views on unions without facing unfair labor practice charges. Following this, the NLRB’s *Babcock & Wilcox* decision held that employers could lawfully require employees to attend meetings where the company expressed its union views. The decision was seen as a balancing act, allowing employers to exercise their First Amendment rights while safeguarding employees’ rights to make their own informed decisions regarding unionization.

Amazon.com Services LLC Decision

In a 3-1 decision, the NLRB overturned *Babcock & Wilcox*, ruling that captive-audience meetings are inherently coercive and violate employees’ rights under Section 8(a)(1) of the NLRA 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.” In other words, the NLRB found that such meetings put undue pressure on employees and

create a climate of fear and intimidation, giving three reasons for its decision:

- **Employees’ right to choose:** Under the NLRA, employees have the right to listen or *not* listen to anti-union messaging during work hours. Mandatory captive-audience meetings force employees into an uncomfortable and potentially coercive environment.
- **Employer surveillance:** Captive-audience meetings give employers the opportunity to observe employee behavior, potentially identifying pro-union workers. This could lead to discriminatory actions based on employees’ perceived support for the union.
- **Implicit coercion:** When employers mandate attendance at these meetings, employees may perceive a concomitant mandate to vote against unionization to avoid negative consequences, even if those consequences are not explicitly stated.

Safe Harbor for Voluntary Meetings Concerning Unionization

While it bans captive-audience meetings, the decision does provide a safe harbor for employers who wish to express their views on unionization. According to the decision, meetings concerning employers’ views on unions will not violate the NLRA if:

- **The employer gives advance notice:** The employer informs employees in advance that the meeting is being scheduled and that it intends express its views on unionization.
- **Attendance is voluntary:** The employer makes clear that the meeting is voluntary and attendance is not mandatory.
- **The employer gives assurance of no adverse consequences:** Employees will not be subject to discipline, discharge, or other adverse consequences

for failing to attend the meeting or for leaving the meeting early.

- **No attendance record is kept:** The employer provides assurance it will not keep track of who attends the meeting, who does not attend the meeting, or who leaves the meeting early.

This new standard will apply prospectively, meaning it will not affect situations arising prior to the *Amazon.com Services LLC* decision.

Kaplan's Dissent: Defending Employers' Rights to Express Views on Unionization

NLRB member Marvin Kaplan issued a lengthy dissent, arguing that the majority's ruling infringes on employers' rights under Section 8(c) to express their views on unionization. Kaplan contends that employers should be free to engage with their employees about unions in a manner that ensures their message is heard. He further explains that the text of Section 8(c) makes clear that Congress intended the inquiry into the lawfulness of "expressing any views, arguments, or opinions" or the "dissemination" of those views to focus on the content of the employer's or union's expression, rather than the circumstances surrounding it. Kaplan concludes that "[c]ondemning an otherwise lawful speech on the basis that attendance was mandatory contravenes that principle."

Notably, Kaplan's dissent hints at what is likely to come with the change to a Republican administration: a reversal of this decision and potentially more pro-employer policies. However, only time will tell.

State Laws Banning Captive-Audience Meetings

Even in the absence of this new ruling, there are laws in effect or about to go into effect prohibiting retaliation to varying degrees against employees who refuse to attend captive-audience meetings, including meetings about religion, politics, and unionization, in states including Alaska, California, Connecticut, Hawaii, Illinois, Maine, Minnesota, New York, Oregon, Vermont, and Washington.

Implications of the Decision

This ruling, if it stands, represents a shift in the NLRB's stance on what the NLRA permits with respect to employer-employee communications regarding unionization. While it aims to protect employees from potential coercion and undue influence, it also limits employers' ability to express their opinions on unions in the workplace. Employers should carefully navigate the new rules surrounding employee communications and, at least for now, ensure that any future discussions about unionization are conducted within the parameters of the *Amazon.com Services LLC* decision.

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