LABOR AND EMPLOYMENT LAW
INFORMATION MEMO
NOVEMBER 19, 2024

The National Labor Relations Board Rejects 75 Years of Precedent and Bans Captive Audience Meetings

Once again, the National Labor Relations Board (the Board) has upended long-established precedent. On Nov. 13, 2024, the Board issued its decision in *Amazon.com Service, LLC*, banning so-called "captive audience meetings" where employers express their views on unionization.

In doing so, the Board overruled its seminal decision in *Babcock & Wilcox Co. (1948)*, which affirmed speech rights of employers under Section 8(c) of the National Labor Relations Act (Act). Section 8(c) provides that an employer's expression of "any views, arguments, or opinions", including about unionization are protected by the Act, provided "such expression contains no threat of reprisal or force or promise of benefit." The *Babcock* Board relied on Section 8(c) in upholding employers' right to hold mandatory meetings during work time where they lawfully express their views on unionization. For more than 75 years, employers have relied on *Babcock* to conduct these important meetings, which are often employers' first opportunity to respond and share information on the realities of unionization after many weeks and months of one-sided union messaging.

The *Amazon* Board articulated three primary reasons for overruling *Babcock*:

- First, it argued that captive audience meetings interfere with employees' Section 7 right to choose the "degree to which [they] will participate in the debate concerning [union] representation." When an employer compels attendance at such a meeting, the Board found this effectively conditions an employee's continued employment on the abandonment of their Section 7 rights.
- Second, the Board maintained that captive audience meetings "can readily serve as a mechanism for employers to observe and surveil employees" in attendance. Mandatory attendance allegedly allows employers to observe and monitor employees and determine their feelings about union support. For example, employers can monitor if an employee sits with a known union supporter or observe nonverbal behaviors (e.g., rolled eyes) in response to the employer's statements.
- Third, the Board found that because the employer has compelled attendance at the meeting "on pain of discipline or discharge," employees may "reasonably conclude that, in fact, they do not have free choice concerning union representation."

The Board further held that *Babcock* misapplied the speech protections of Section 8(c). It found that the unambiguous meaning of Section 8(c) grants employers the right to ***express*** their "views, arguments or opinions," but "they may not compel employers to ***listen*** to them." Captive audience meetings, the Board opined, are coercive, not because of the content of the message, but because of the employer's "use of compulsion: the threat, whether explicit or implicit, that employees will suffer discipline, discharge or some other adverse consequence if they fail to attend the meeting." In sum, the *Amazon* Board banned mandatory meetings during work time where the employer expresses views on unionization, regardless of the content of the employer's message.

Voluntary meetings, however, remain permissible. The Board established a "safe harbor from liability" in its decision. An employer who wishes to express its views on unionization in the workplace will not be found to have violated the Act, provided that reasonably in advance of the meeting, the employer informs employees that:

- The employer intends to express its views on unionization at a meeting at which attendance is voluntary;
- Employees will not be subject to discipline, discharge, or other adverse consequences for failing to attend the meeting or for leaving the meeting; and
- The employer will not keep records of which employees attend, fail to attend, or leave the meeting.

Notably, New York employers have faced a similar State law restriction on mandatory meetings since late last year. Specifically, in September, 2023, Gov. Hochul authorized an amendment to Section 201-d of the New York Labor Law to prohibit employers from taking adverse action against an employee based on their refusal to (1) attend an employer-sponsored meeting or (2) listen to speech or view communications, the primary purposes of which are to communicate the employer's opinion concerning "political matters." Section 201-d defines "political matters" to include matters relating to labor organizations, effectively prohibiting New York employers from holding captive audience meetings to express opinions on unionization.

It remains to be seen if *Amazon* will appeal this decision. For the time being, however, private sector employers are prohibited under federal labor from continuing to hold mandatory meetings during work time to address unionization. The failure to comply could create significant exposure for an employer, including damages recoverable by employees disciplined for refusing to attend or the overturning of an employer's victory in a union representation election. Employers should consult with trusted counsel to determine the most effective method to communicate their views on unionization in the wake of this decision.

For more information, please contact Sanjeeve DeSoyza, Rebecca LaPoint or any attorney in Bond's labor and employment practice or the Bond attorney with whom you are regularly in contact.

BOND SCHOENECK & KING ATTORNEYS