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Captive Audience Meetings Jettisoned by NLRB

Client Alert

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In a decision that reversed over 75 years of precedent, the Democratic-majority National Labor Relations Board (NLRB or Board) held that so called captive-audience meetings are no longer permissible under the National Labor Relations Act (NLRA). Its decision in *Amazon.com Services LLC* on November 13, 2024, comes during the twilight of the current Board, whose composition will soon shift to a Republican-majority due to the outcome of the Presidential election.

Captive-audience meetings are mandatory meetings where employers require employees to listen to their opinions about a unionization drive. Under *Babcock & Wilcox Co.* (1948), employers could compel their employees to attend such meetings under threat of discipline or discharge. Further, employers could remove employees from the meeting for expressing their own views or asking questions.

The current Board strongly disapproved of *Babcock*, finding its holding allowing captive-audience meetings “largely unexplained.” Instead, *Amazon.com Services LLC* bans such meetings outright. Captive-audience meetings run afoul of the NLRA because, according to the new ruling, they tend to hamper employees’ right to freely choose whether to unionize. The allegedly coercive nature of such meetings also means that the First Amendment would not protect an employer who holds captive-audience meetings. Importantly, unlike most of the Board’s decisions, the new rule applies only prospectively to new cases and does not affect any case that was pending at the time of the ruling.

While the longevity of the new standard remains in doubt due to the impending change in leadership at the NLRB, employers must nonetheless hew closely to *Amazon.com Services LLC* for the time being. From a practical standpoint, this simply means that employers can no longer require employees to attend

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company meetings about a union drive. However, this does not mean companies are not permitted to have any meetings about unionization. If companies want to hold a meeting giving voice to their opinions about unionizing, the Board recommends employers inform employees of the following three items reasonably ahead of the meeting: (1) the subject matter of the meeting and that attending is voluntary; (2) employees will not be disciplined for not attending or leaving early; and (3) the company will not keep track of who attends or stays until the end of the meetings.

For advice about how this opinion impacts your organization, please contact Butzel's Labor & Employment Law group. Butzel prides itself on being well-versed in traditional labor law and regularly provides employers counsel regarding any aspect of the union-employer relationship; from unionization drives to contract negotiations, to grievance arbitrations, our attorneys have deep experience in this niche area of the law.

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