Mandatory Employer Meetings Now the Target of NLRB General Counsel’s Focus

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National Labor Relations Board (NLRB or the Board) General Counsel Jennifer Abruzzo indicated in a memo to regional directors this week that she is seeking to ban mandatory employee meetings, a tool that has been utilized by employers to inform employees of their rights to resist unionization. Abruzzo’s intent to impose such a ban is inconsistent with NLRB precedent, which has permitted these meetings since the 1940s.

The Memo to Regional Directors
Though General Counsel Abruzzo acknowledges in her memo to regional directors that employers are permitted to hold anti-union meetings under current NLRB precedent (which has been the case since the 1940s), Abruzzo nonetheless asserts that “captive audience” meetings are “at odds with fundamental labor-law principles, our statutory language, and our congressional mandate.” Abruzzo asserts that captive audience meetings are unlawful because they “inherently involve an unlawful threat that employees will be disciplined or suffer other reprisals if they exercise their protected right not to listen to such speech.” In other words, she argues that captive audience meetings where employers provide their positions against unionization are inherently coercive.

Interestingly, Abruzzo’s memo comes one day after President Joe Biden publicly endorsed the union efforts being made at a multinational technology company for the first time. The memo is also seemingly inspired by unfair labor practice charges filed with the NLRB by the Retail, Wholesale, and Department Store Union in which it alleges that the company violated federal labor law by requiring workers’ attendance at captive audience meetings. The filing alleges that these meetings are unlawful because they limit employees’ ability to freely choose whether they want to join the union.

**Ramifications of a Ban on Anti-Union Meetings**

If captive audience meetings are banned, employers will be left without one of the ways to curb enthusiasm for union organization and formation, which is the underlying goal of President Biden and Abruzzo. Captive audience meetings are a common tool used to deter workers from joining a union and explaining to the employees the benefits already offered to them without the involvement of labor unions. The Economic Policy Institute in 2009 conducted a study showing that nearly 90% of employers require employees to attend captive audience meetings during work hours at which they are compensated for the time.

Abruzzo contends that the meetings give employers an unfair advantage because employees are required to attend the meetings during work hours. Unions, unlike employers, do not have a platform in the work setting to host equivalent pro-union meetings.

If Abruzzo’s initiative is successful, employers will be required to fundamentally alter their strategy of union avoidance. Additionally, in times when there is not a union campaign afoot at the employer’s premises, will Abruzzo contend that having annual benefit meetings where employer policies are outlined and explained is, likewise, not permissible? Only time will tell.

**Summing It Up**

In conclusion, it is anticipated that Abruzzo will ask the NLRB to overturn its own precedent, dating back to the 1940s, that has held that captive audience meetings are lawful. The Board will then consider whether the ability of workers to freely choose to join a union could be influenced by such mandatory meetings. If the Board decides to overturn its own precedent, over 90% of employers will not have the ability to inform employees of their rights to resist unionization.
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