



IRI ALERT

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NLRB's General Counsel Wants Mandatory Employer Meetings About Unions Declared Illegal

Jennifer Abruzzo, General Counsel for the National Labor Relations Board (NLRB), wants the Board to determine that employers' mandatory meetings to discuss the union is illegal. Such so-called "captive audience" meetings have been lawful under the National Labor Relations Act (NLRA) for 75 years. Despite this precedent, Abruzzo, a former lawyer for the Communication Workers of America, issued Memorandum 22-04 "The Right to Refrain from Captive Audience and other [Mandatory Meetings](#)" on April 7, 2022.

In it, Abruzzo noted she is preparing a formal brief for the Board to consider. While her memo doesn't change existing case law, the Democratic-majority Board may agree with the General Counsel's position and rule in a future case that mandatory meetings are in fact unlawful. Depending on the test case, we expect such a ruling would be appealed to the U.S. Circuit Court of Appeals as it raises issues with both the First Amendment of the U.S. Constitution and Section 8(c) of the NLRA.

Section 8(c) of the National Labor Relations Act protects an employer's right to express views, arguments, and opinions, so long as "such expressions contain no threats of reprisal or force or promises of benefits." Meanwhile, the U.S. Supreme Court has recognized that Section 8(c) allows for "uninhibited, robust, and wide-open debate in labor disputes."

Abruzzo is also encouraging the Board to require that employers make clear to employees that their attendance at these meetings is truly voluntary. She argues that "captive audience" (a pejorative union term) meetings chill employees' Section 7 rights to refrain from listening to employer speech regarding unionization. She writes that required meetings "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."

Further insight can be found in a brief filed by the Counsel for the General Counsel of the NLRB in Phoenix on April 11, 2022. In this case involving Cemex and the International Brotherhood of Teamsters union, she laid out the GC's position in what is likely the first case before the NLRB to test this doctrinal shift. This brief also suggests that the GC is trying to restrict managers from "cornering employees on working time" to talk about union-related issues.

What should employers do?

What should employers do based on the intent of the GC's Memo, especially when employee meetings that include discussions related to unionization are common during union-organizing drives and NLRB-conducted elections? Undoubtedly, they are an efficient way to inform employees of their federally protected legal rights and allow for open discussion and Q&A. Here are a few recommendations for employers to consider:

- Reassess your labor readiness and preventative strategies in light of these potential changes
- Build strong and robust communication, social media, and digital strategies
- Provide updated labor relations training considering the current organizing environment
- Seek advice from experienced subject matter experts and internal/external legal counsel

IRI will continue to be a thought leader and stay abreast of our ever-changing labor laws. We believe this is not the end of changes to come under this administration and its appointees. With our everchanging labor environment, now is the time that employers should rethink their labor relations and preventative strategies and retain expert labor advisors.

If you would like us to do a comprehensive readiness assessment to evaluate and strengthen your labor relations and preventative strategies, please contact IRI Consultants at (313) 965-0350 or resources@iriconsultants.com for more information.

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