CLIENT ALERTS & INSIGHTS

General Counsel Seeks to Overturn 74 Years of Board Law Allowing Employers to Hold Anti-Union Meetings

APRIL 8, 2022

Authors: W. Eric Baisden, Adam Primm

The chief lawyer for the National Labor Relations Board (the "Board") wants to ban mandatory meetings called by employers during worktime to dissuade employees from joining unions, calling them an "unlawful threat" to employees who don't want to listen to the message.

"Forcing employees to listen to such employer speech under the threat of discipline-directly leveraging the employees' dependence on their jobs-plainly chills employees' protected right to refrain from listening to this speech in violation of Section 8(a)(1)" of the National Labor Relations Act (the "Act"), Chief Counsel Jennifer Abruzzo wrote in an April 7 memo. "The fact that threat arises in the context of employer speech does not immunize its unlawful coercive effect."

Abruzzo, whose office is responsible for investigating and prosecuting U.S. labor law violations, said she believes that the Board got it wrong 74 years ago in *Babcock & Wilcox Co.*, 77 NLRB 577 (1948), when it decided employers do not violate the Act by compelling employees to attend so-called captive meetings and one-on-one meetings during work time to persuade them to reject unions in the workplace.

Abruzzo said the time has come to overrule *Babcock* and other Board decisions, even though-despite contrary language in her April 7 memo-they make clear that employers cannot threaten employees during those meetings or hold them within 24 hours of a union vote.

In the memo, Abruzzo said she plans to ask the Board in upcoming cases to prohibit employers from providing anti-union messaging when employees are forced to convene on paid time or cornered by management while performing their job duties.

It is unclear how receptive the Board will be to Abruzzo's arguments. While the Board is currently Democrat-controlled, any change to the current law is sure to face serious opposition from employers and businesses concerned about regulating free speech.

We will continue to monitor developments as they are announced and, as always, Benesch's Labor & Employment Group is available to answer any questions regarding the likely changes.

Rick Hepp at rhepp@beneschlaw.com or 216.363.4657.

W. Eric Baisden at ebaisden@beneschlaw.com or 216.363.4676.

Adam Primm at aprimm@beneschlaw.com or 216.363.4451.