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## **NLRB OUTLAWS CAPTIVE AUDIENCE MEETINGS**

*By: Joseph Maddaloni, Jr., Esq.*

On November 13, 2024 in an eagerly awaited decision involving Amazon, the National Labor Relations Board (“Board”) outlawed captive audience meetings and, thereby, eliminated a common practice widely used by employers for more than 75 years to combat a union organizing campaign. A majority of the Board ruled that mandatory anti-union meetings violate the National Labor Relations Act (“Act”) because they interfere with workers' freedom to exercise their labor rights by forcing them to hear their employers' views.

For three quarters of a century employers have used captive audience meetings to educate workers about the pitfalls and potential detriments of unionizing, and to share the employer’s views and opinions regarding unions. These meetings have long been recognized as an expression of an employer’s free speech rights, which are guaranteed by the U.S. Constitution and expressly set forth in Section 8(c) of the Act. These meetings are deemed “captive” because employers generally conduct them during working hours, pay the workers to be there, and require the workers to attend.

According to a majority of the Board, making these meetings mandatory violates Section 8(a)(1) of the Act, which forbids employers to "interfere with, restrain, or coerce employees in the exercise" of their labor rights. The majority concluded that these meetings interfere with workers' labor rights in three ways: they trample on workers' rights to choose not to join the labor debate; they give employers a chance to observe workers' union sentiments; and they inhibit workers' freedom by demonstrating the employer's power over them. Now, employers may only hold meetings to share their views on unions only if they alert workers to the subject in advance, make it voluntary to attend with no consequences for missing the meetings, and do not take attendance.

This week’s ruling is one of the most impactful Board decisions of President Joe Biden's administration by eliminating one of the most commonly used tactics for persuading workers not to unionize. Amazon intends to appeal and given the wide-spread use of captive audience meetings this issue is likely headed to the US Supreme Court for determination unless overturned beforehand once the composition of the Board swings Republican during President Trump’s upcoming administration.

**Florham Park**

220 Park Avenue  
Florham Park, NJ 07932  
973-539-1000

**Paramus**

115 West Century Road  
Suite 100  
Paramus, NJ 07652  
201-262-1600

**Sparta**

351 Sparta Avenue  
Sparta, NJ 07871  
973-295-3670

**New York**

9 East 40th Street  
New York, NY 10016  
646-652-7775

In the interim, employers confronted with a union organizing campaign must avoid captive audience meetings unless conducted in accordance with the Amazon ruling and must also avoid committing other unfair labor practices. How an employer handles a union organizing campaign has serious consequences. The attorneys in our Labor & Employment Group have decades of experience assisting employers in responding to a union organizing campaign. Contact Schenck Price's Labor and Employment Law Practice Group if you need assistance or have questions about captive audience meetings or union organizing campaigns.

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