NLRB General Counsel Takes Aim At Employer Free Speech

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The new NLRB general counsel Jennifer Abruzzo recently issued a memo opining that employer "captive audience" meetings – where an employer may require employees to attend a meeting in which it shares information on union issues – are unlawful.

Such meetings, which have been lawful for more than half a century, serve as a vital tool for employers during a union organizing campaign. According to the memo, Abruzzo likewise will seek to make unlawful even one-on-one conversations where an employee "is cornered by management while performing their job duties."

Abruzzo ignores decades of precedent finding that employers – who pay employees for the time they spend in these meetings or in discussing these issues with management – are permitted to express the company's opinion on union issues, including the opinion that employees should not organize. And the NLRA acknowledges as much, codifying (since 1947) in section 8(c):

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

Under 8(c), the NLRB historically has analyzed only the content of such mandatory meetings to determine if they contained a threat of reprisal or force or promise of benefit. Abruzzo's goal is to do away with that reasonable analysis and replace it with a rule that would restrict employers from providing their opinion to employees during mandatory, paid meetings.

Notably, unions have no such restriction on their speech and indeed are able

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to visit employees at home or wherever else they choose outside of the workplace. But therein is the point of Abruzzo's legal position and her tenure as the NLRB's top prosecutor: to make union organizing campaigns easier for unions and more difficult for employers.