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Law Professors Petition For New NLRB Rule: Union "Captive Audience" Meetings

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In a recent petition filed before the NLRB, 106 academic professors of labor and employment relations law submitted a request for the Board to adopt a new rule pertaining to "captive audience" meetings. The term "captive audience" meeting describes employer meetings with employees during a union campaign which allow management to discuss their views on unionization. Typically employers require employee attendance and hold the meetings on working time. Considering the meetings occur during working time, unions cannot similarly require employers to let them hold such meetings during union campaigns. Essentially, the proposed rule would allow a union to hold a similar meeting during working time whenever the employer holds such a meeting. The rule further calls for an election to be set aside and new election conducted whenever the employer prevents a union "captive audience" meeting and the union subsequently loses the election. (See more about election rules here.) The professors cite examples of cases where senior management officials met with employees one-on-one or in small groups prior to an election. The petition also cites fairness and democratic principles to explain the need for the rule change. The professors' proposed rule would have the effect of overturning longstanding Board precedent. In General Electric, 156 NLRB 1247, 1248 (1966), the Board upheld an employer's right to conduct the meeting and to refuse a union's request to attend. The employer made a campaign speech to its employees at a meeting held on company premises during working time two days before the election. When the union asked to attend and hold a debate during the meeting, the employer refused. The Board at the time described the case as posing a question of substantial importance, specifically: Can a fair and free election be held where an employer makes an antiunion speech on company time and premises, in the period immediately preceding an election, and the union involved is not afforded the opportunity, which it seeks, to reply under similar circumstances?

In answering that it cannot, the union argued that the elections subsequently held must be set aside. The Board ultimately certified the election and relied on its recent decision guaranteeing union access to employee names and addresses, finding that unions had increased opportunities to communicate with employees. The professors' call for a new rule comes at a time when employers are still adjusting to the Board's sweeping changes to its election rules. In addition, current Board membership is about to look quite different – one vacancy current exists after Member Johnson's term expired earlier this year and another is on the horizon when Member Hirozawa's term expires in August of this year. Considering the Board's *General Electric* decision discussed the ability to communicate with employees, it would difficult to argue that unions do not have the same or even better means of communication than they did in 1966. Nonetheless, we'll watch to see what consideration the Board gives to the petition.

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