



November 15, 2022

Mr. David Berry
Inspector General
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dear Inspector General Berry:

A recent complaint filed against Amazon suggests that NLRB personnel are taking an overly aggressive approach to enforcement of the National Labor Relations Act (NLRA) in a manner that is inconsistent with both the Act and Supreme Court precedent. We urge you to investigate what safeguards the agency has in place when filing complaints so that enforcement activity is not converted into frivolous harassment, or worse, outright intimidation, of employers exercising their rights under the Act.

By way of background, Section 8(c) of the NLRA states that regarding employer speech: “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 Act, if such expression contains no threat of reprisal or force or promise of benefit.” This has long been interpreted as allowing employers broad leeway to communicate their points of view on union issues.

In addition, in the *Chamber v. Brown* decision,¹ the Supreme Court of the United States found that the restrictions on employer speech advanced by the Wagner Act (and enacted by the state of California in the challenged statute in the underlying case), were superseded by the Taft-Hartley Act, and that attempts to limit employer speech by, for example, restricting employee meetings, were inconsistent with Congressional intent.²

¹ 554 US 60 (2008).

² “California’s policy judgment that partisan employer speech necessarily ‘interfere[s] with an employee’s choice about whether to join or to be represented by a labor union,’ 2000 Cal. Stats. ch. 872, §1, is the same policy judgment that the NLRB advanced under the Wagner Act, and that Congress renounced in the Taft-Hartley Act.”

In the Spring of 2022, the CEO of Amazon, Andy Jassy, participated in two media interviews in which he was asked about unions. His responses were measured and provided an honest opinion about the company's views regarding unions. For example, in a CNBC interview, Jassy stated clearly that: "[I]t's employees' choice whether or not they want to join a union." This was followed by an expression of general opinion that: "We happen to think they're better off not doing so for a couple of reasons at least." Further truthful statements were made about unions acting as an intermediary between workers and supervisors, and how that could lead to a more "bureaucratic" process.³

Despite the generic nature of these comments, the Regional Director of Region 19 issued a complaint against Amazon alleging violations of §7 and §8(a)(1) of the NLRA.⁴ Under the complaint, the General Counsel "seeks an order requiring that Respondent copy and mail, at its own expense, as well as post electronically and e-mail, any Notice to Employees that may issue in this proceeding to all employees employed at its U.S. facilities at any time 4 since April 14, 2022. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged."

This complaint appears entirely frivolous. The statements in question in no way constitute a threat of reprisal or force or promise of benefit. In fact, these comments are exactly the type of employer speech that Section 8(c) was meant to protect. A charitable assumption would be that the NLRB is 'firing a shot over the bow' meant to intimidate employers into forgoing their free speech rights.

Complaints of this nature may become more frequent given a General Counsel memo from April 7, 2022.⁵ In GC Memo 22-04, the General Counsel argues that mandatory meetings at which union issues are discussed "inherently" involve "unlawful threats." While the Board has not adopted this as official policy, the General Counsel has requested that it do so, regardless of the statutory protections of Section 8(c) or the clear statement of congressional intent in *Chamber v. Brown*. Given this posture, it is to be expected that regional offices will follow the rationale of GC memo 22-04 and aggressively go after employers who exercise their right to speak about union matters.

³ CNBC Exclusive: CNBC Transcript: Amazon CEO Andy Jassy Speaks with CNBC's Andrew Ross Sorkin on "Squawk Box" Today.

⁴ CPT.19-CA-297441.Complaint and Notice of Hearing 10-25-22.pdf.

⁵ General Counsel Memorandum GC 22-04.

We urge you to investigate what safeguards the agency has in place to review complaints to ensure that they do not chill the exercise of rights guaranteed under the Act. In particular, we encourage you to determine whether the agency is issuing appropriate guidance and training materials to the regional offices to prevent such an occurrence. Enforcement of the Act should not degrade into base harassment and intimidation of employers or workers. Thank you for your attention to this urgent matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Spencer", with a long horizontal flourish extending to the right.

Glenn Spencer
Senior Vice President
Employment Policy
U.S. Chamber of Commerce