

Labor and Public Employees Committee

JOINT FAVORABLE REPORT

Bill No.: SB-64

Title: AN ACT CONCERNING CAPTIVE AUDIENCE MEETINGS.

Vote Date: 3/14/2019

Vote Action: Joint Favorable

PH Date: 3/5/2019

File No.:

***Disclaimer:** The following JOINT FAVORABLE Report is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose.*

SPONSORS OF BILL:

Labor and Public Employees Committee.

REASONS FOR BILL:

The bill would prohibit employers, including the state and its political subdivisions, from requiring their employees to attend an employer-sponsored meeting if the meetings primary purpose is to communicate the employers view about political office political parties legislation regulation and decisions to join a or support a political party or political civic, community fraternal; or labor organization. It also prohibits employers from holding meetings with employees about religious matters related to a religious practice and the decisions to join or support any religious organization or association.

RESPONSE FROM ADMINISTRATION/AGENCY:

Tanya Hughes, Executive Director, Commission on Human Rights and Opportunities:

Being compelled to attend a meeting where employer expressers an opinion on religious matters is a particular kind of discrimination. It signals to those who don't share the same views that they are targeted, are unwelcome and must hide their own beliefs or suffer the ire of their employer and face reprisals. No one should be made to feel such discomfort or hostility. They suggest one change in the language: Add to subsection (e) of the bill the following: (e) Nothing in this section shall be construed to limit an employee's right to bring a common law cause of action against an employer for wrongful termination, to file a complaint with the Commission on Human Rights and Opportunities, or to diminish or impair the rights of a person under any collective bargaining agreement. This makes it explicitly clear that filing a complaint with CHRO is still an available option.

NATURE AND SOURCES OF SUPPORT:

Senator Martin M. Looney, President Pro Tempore: The First Amendment to the Constitution guarantees the rights of freedom of speech and assembly. These include the right not to assemble and the right not to listen to coercive speeches. This protects employees from economic sanction if they choose not to listen to an employer's political or religious views. This includes views about the decision to join a political, social or community group or activity. States may place conditions on entities that receive state money in order to support or encourage compliance with state public policy. Neither Congress nor the courts have ever determined that captive audience speeches are to be encouraged.

Stephen Anderson, President, CSEA, SEIU Local 2001: Political/religious coercion by employers is a growing threat. During election season, there were reports of employers requiring workers, under threat of retaliation, to participate, unpaid and during their free time, in rallies for presidential candidates. This is bad for our democracy and the workplace. Employees should not be forced to adhere to their employer's ideologies.

Beverly Brakeman, Director, UAW Region 9A: Although Federal law protects workers' freedom to form a union, many employers respond with intimidation and misinformation in order to deter workers from joining. Some employers held "captive audience:" meetings carefully scripted to fall within the scope of the law that focused on dissuading a worker's support of a union. They have the upper hand and can discipline anyone who speaks up in favor and fire workers who don't attend. Despite a majority of cards being signed in support of the union, employees became so frightened about losing their jobs that elections were ultimately lost.

Cameron Champlin, Plumbers and Pipefitters Local 777: Employees should have the right to decide if they want to attend meetings concerning political or religious matters unrelated to their jobs.

Keri Hoehne, Union Representative, United Food and Commercial Workers Union Local 371: A 2017 poll by MIT Researchers reported 48% of workers would vote to join a union if they had the opportunity. However, only slightly more than 10% of workers belong to unions today. One of the reasons is that employers intimidate, coerce and lie in an effort to get employees to vote against joining. This communication is mostly done in captive audience meetings, either one-on-one or in a group. Intimidation examples were given including employees told if the facility gained a union, they would lose their full time status. Other employees were told the plant would have to close because they would be unable to compete with manufacturing plants in the south where there was lower pay. Yet another group was told they would lose overtime pay if they organized but were bribed with raises if they voted no. Some were told they would lose their work visas and face deportation. Sometimes these tactics are against the law, but by the time the union files a charge with the National Labor Board and investigated, the organizing campaign has long been over. The penalties far outweigh the benefit for employers.

Zak Leavy, Legislative Advocate, AFSCME Council 4: This protects an employee's right to opt out of a mandated meeting where their employer discusses politics, religion or labor organizing without fear of retaliation. It is NOT the employer's right to impose their views. This bill helps workers protect their freedom to join together in a union and bargain for a fair return on their work.

Sal Luciano, President, CT AFL-CIO: Unions help bring workers into the middle class. On average, workers who join together to bargain wages, hours and working conditions earn higher wages, utilize fewer safety net services, have greater productivity and experience less turnover than non-union workers. Yet when workers try to form unions, employers routinely respond with campaigns of threats, coercion and misinformation. In theory, federal law protects workers' freedom to form a union, but in reality, workers struggle to maintain this basic right free from employer harassment and intimidation. He gave examples of employers who utilized captive audience meetings and other hostile tactics when workers sought to form a union. In no way does this bill prevent employers or anyone else from discussing any subjects. The only thing the bill prohibits is firing or otherwise disciplining employees who leave the meeting because they don't want to listen to the discussion of such topics. Workers should have the freedom to make their own decisions.

Ray Rossomando, Director of Policy, Research and Government Relations, CT Education Association: Our political environment has long been fraught with polarized political positions that have worsened in recent years. This has made political speech more contentious and political positions more intractable. It has expanded into how leaders of companies or other organizations seek to suppress employees' free speech and freedom to associate in unions. This led to perceptions of diverse religious views and affiliations, resulting in bias, intimidation and bigotry. This bill is a step in the right direction.

NATURE AND SOURCES OF OPPOSITION:

CT Hospital Association: They submitted testimony opposing this bill saying it is preempted by the National Labor Relations Act (NLRA). This bill limits an employer's current right to require attendance at meetings where his view on organizing is presented. The bill is exactly like the one submitted last year, HB 5473. This conclusion has been reached by both the Office of the Attorney General and the Office of Legislative Research. (George Jepsen, 2018, FORMAL OPINION ON HOUSE BILL 5473.) This bill has the unintended effect of subjecting employees to conduct unlawful under the NLRA. It interferes with employees' rights by creating impediments to the union organizing process and be present employees with an alternative view/ information that a union would not provide.

Kevin A. Dillon, Executive Director, CT Airport Authority: This bill infringes on management rights. They have never held "captive audience meetings" requiring employees to attend any such meetings nor do they have plans to do so in the future, but they do not believe legislation should dictate how management interacts with its employees.

Cheryl E. Dudas, Executive Director, Independent Electrical Contractors of New England: This legislation prohibits businesses from speaking with their employees at mandatory staff meetings to keep them informed of key workplace and industry issues. Needless limitations would be placed on discussions concerning pending legislation on issues affecting employees' jobs. The bill is in conflict with the National Labor Relations Act which expressly protects the right of employers to hold mandatory meetings for purposes of communicating their views about issues affecting the workplace.

Christopher Fryxell, President, Associated Builders and Contractors of CT: This bill strikes an employer's freedom to discuss issues that may affect employee well-being and the success of the company that employs them. Issues such as wages, employee benefits and other terms of employment would be banned which severely inhibits employees' access to information. Many businesses support various community and civic organizations and this bill prevents or impedes this work, harming the organizations and surrounding community. Finally, It is preempted by federal law as the state can't govern areas of law covered by the National Labor Relations Board.

Eric Giede, Vice President of Government Affairs, CBIA: Prior to 2011, a variety of "captive audience" bills were introduced. In each case, representatives of CBIA testified in opposition, noting that the National Labor Relations Act has exclusive authority over law governing relations between unions and private sector employers. States are precluded from governing any area of law covered, which includes restricting employers from communication freely with employees at staff meetings. This bill unreasonably interferes with the relationship between employers and employees. It would curtail discussions about legislation or regulations that could impact jobs, encumber communications about issues vital to jobs, wages and benefits, inhibit an employer's ability to present the impact collective bargaining would have on a business and hinder corporate charitable community and social activities that benefit society at large.

Jennifer Jennings, Executive Director, CT Heating and Cooling Contractors Association: This bill is unnecessary, overly broad and unreasonably restricts employers' ability to disseminate important information to employees. They are concerned this would bar legitimate and important communication from employer to employees, even when in the employees' best interest. Instead of anti-competitive proposals such as this, they encourage the legislature to consider measures that would help CT reduce costs, be more competitive and provide job opportunities and learning experience for the future workforce.

Andy Markowski, State Director, NFIB: This bill interferes with employer/employee communications. It could lead to new and costly civil litigation. The provisions are ambiguous, overly broad, and subject to varying interpretations. Who determines the "primary purpose" of the communication? What exactly are "casual conversations"? Who determines and how is it determined if/when legislation or regulations "directly impact" an employer's business? Compliance with this law would be virtually impossible for many small and closely-held businesses and expose them to potentially costly complaints and frivolous litigation.

Scott Shepard, Policy and Research Director, Yankee Institute for Public Policy: This bill violates the First Amendment of the United States Constitution and is pre-empted by the Federal Labor Relations Act. In a recent Supreme Court decision, it was made clear that "expressly precludes regulation of speech about unionization 'so long as the communications do not contain a threat of reprisal or force or promise of benefit.'" The bill does not contemplate neutral restrictions. Its prohibitions work only against employers, no other parties. The state itself has recognized this bill as pre-empted under federal law that likely violates the Constitution. Therefore it will be subject to defense costs and attorneys' fees of the party that challenges, all to no ultimate purpose.

Reported by: Marie Knudsen

Date: April 3, 2019

