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The “Worker Privacy Act”: Some authorities with respect to preemption under the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* (“NLRA”)

- *San Diego Bldg. Trade Council v. Garmon*, 359 U.S. 236 (1959): The NLRA preempts state regulation of activity protected, prohibited, or arguably protected by the NLRA.
- Section 8(c) of the NLRA (29 U.S.C. § 158(c)): “[t]he expressing of any views, argument, or opinion, or the dissemination thereof ... shall not constitute or be evidence of any unfair labor practice ... if such expression contains no threat of reprisal or force or promise of benefit.”
- *Peerless Plywood Co.*, 107 N.L.R.B. 427 (1953); *Livingston Shirt Corp.*, 107 N.L.R.B. 400 (1953): Section 8(c) of the NLRA allows mandatory meetings so long as they do not occur within 24 hours of an election. “[W]e find nothing in the statute which even hints at any congressional intent to restrict an employer in the use of his own premises for the purpose of airing his views.” *Id.* at 406.
- *Metropolitan Milwaukee Ass’n of Commerce v. Milwaukee County*, 431 F.3d 277, 280 (7th Cir. 2005): This case struck down as preempted an ordinance providing “no employee ... shall be required to attend a meeting or event that is intended to influence his or her decision in selecting or not selecting a bargaining representative.” The 7th Circuit found the prohibition enacted out of “dissatisfaction with the balance that the [NLRA] strikes between labor and management.” But the court stated the ordinance would “give the union a leg up” beyond what “federal law permits,” which is “the kind of favoritism that the [NLRA] anathematizes.” The court was very clear: “Federal labor law allows employers to require their employees to attend meetings, on the employer’s premises and during working time, in which the employer expresses his opposition to unionization.”
- *NLRB v. Lenkurt Elect Co.*, 438 F.2d 1102, 1107 (9th Cir. 1971): NLRA protects supervisor one-on-one discussions with employees on possible negative effects of union organizing.
- *Beverly Enterprises-Hawaii, Inc.*, 326 N.L.R.B. 335, 336 (1998): NLRA protects employers’ right to disseminate written materials to employees in the workplace regarding union organizing.

With respect to the Employer’s First Amendment Rights:

- *NLRB v. United Steelworkers of America*, 357 U.S. 357, 362 (1958): Non-coercive employer speech about unions “is a right protected by the so-called ‘employer free speech’ provision of Section 8(c) of the NLRA.”
- *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969): Section 8(c) of the NLRA “implements the First Amendment.”