COMMITTEE ON
EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

July 6, 2023

Angela Thompson
General Counsel
Communication Workers of America
501 3rd St., NW
Washington, DC 20001

Dear Ms. Thompson:

Thank you again for testifying at the May 23 Subcommittee on Health, Employment, Labor, and Pensions hearing on "Protecting Employees' Rights: Ensuring Fair Elections at the NLRB."

Enclosed are additional questions submitted by Subcommittee members following the hearing. Please provide written responses no later than July 27, 2023, for inclusion in the hearing record. Responses should be sent to Michael Davis of the Committee staff who can be contacted at (202) 225-7101.

We appreciate your contribution to the work of the Subcommittee.

Sincerely,

Bob Good
Chairman
Subcommittee on Health, Employment, Labor, and Pensions

Enclosure

Questions for the Record for
ANGELA THOMPSON

Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor, and Pensions
"Protecting Employees' Rights: Ensuring Fair Elections at the NLRB"
Tuesday, May 23, 2023
10:15 a.m.

Rep. Frank Mrvan (D-IN)

1. Under current law governed by *NLRB v. Gissel*,[1] if the union demonstrated majority support prior to an election but has not been certified from having won an election, the NLRB may only issue a bargaining order if the employer's behavior was so outrageous or pervasive as to make a fair rerun election impossible. My colleagues on the other side have argued that strengthening the standard for issuing bargaining orders would create an end-run around elections. Is that accurate, or would strengthening the standard actually incentivize elections to be freer and fairer?

Rep. Susan Wild (D-PA)

1. Although Philip Miscimarra's testimony claims that Section 8(c) of the National Labor Relations Act (NLRA) protects the right of employers to discipline employees if they do not attend mandatory anti-union meetings held by the employer, Section 8(c) is limited to protecting speech.[2] The protection does not extend beyond employer speech into employer actions, in this case the threat of reprisal for avoiding anti-union rhetoric. His testimony argues that Congress intended to overrule a Board decision that outlawed captive audience meetings. However, the legislative history he cited does not address the compulsory and coercive nature of captive audience meetings whatsoever. In fact, the legislative record is explicit that its goal was only to protect non-coercive speech even if it takes place during working hours.[3] As such, Congress did not intend for Section 8(c) to provide blanket protection for threats related to that speech. How is General Counsel Abruzzo's position respecting the text and legislative history of this section?

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[1] 395 U.S. 575 (1969).
[2] 29 U.S.C. § 158(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 provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.").
[3] S. Rep. 80-105, at 23-24 (1947), *reprinted in* 1 Legis. Hist. 429-30 (describing Section 8(c) as responding to an NLRB decision for being "too restrictive" on account of its "holding…speeches by employers to be coercive…if the speech was made in the plant on working time").