

## Questions for the Record from

### REPRESENTATIVE BOBBY SCOTT

#### Committee on Education and Workforce

#### Health, Employment, Labor, and Pensions Subcommittee hearing titled: “Building an AI-Ready America: Adopting AI at Work”

Tuesday, February 3rd, 2026

#### Representative Bobby Scott (D-VA)

#### Question(s) for Witness Tanya Goldman:

1. In 2022, then-National Labor Relations Board General Counsel (GC) Jennifer Abruzzo issued a memorandum entitled, *Electronic Monitoring and Algorithmic Management of Employees Interfering with the Exercise of Section 7 Rights*. In 2025, then-Acting GC William Cowen rescinded the memorandum. Ms. Goldman, can you discuss the importance of former GC Abruzzo’s memorandum given the rise of artificial intelligence (AI) and algorithmic tools in workplaces?

#### Answer:

Employers are increasingly using electronic monitoring and algorithmic management tools to surveil workers and deter unionization.<sup>1</sup> Employers collect data from sources including electronic devices, wearables, security cameras, and identification badges, feeding it into automated platforms that manage workers and drive employment decisions. These technologies, combined with access to data about workers’ activities outside the workplace, enable a level of surveillance no human supervisor could match—tracking keystrokes, movements, location, and online activity.<sup>2</sup> The resulting climate of pervasive monitoring, including during breaks and off the job, can chill and interfere with workers’ exercise of legally protected rights under the National Labor Relations Act (NLRA), including the right to organize and engage in concerted activity.<sup>3</sup> Even the perception of this type of surveillance has a chilling effect on workers’ rights.

These risks to workers’ rights are well-documented.<sup>4</sup> Research shows employers use surveillance data to profile employees, predict union interest, and to screen out pro-union workers during

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<sup>1</sup> See, e.g., Frederick Reiber, Allison McDonald, Nathan Kim, and Dana Calacci, *Surveillance, Spacing, Screaming and Scabbing: How Digital Technology Facilitates Union Busting* (March, 2026), [https://www.researchgate.net/publication/401524518\\_Surveillance\\_Spacing\\_Screaming\\_and\\_Scabbing\\_How\\_Digital\\_Technology\\_Facilitates\\_Union\\_Busting](https://www.researchgate.net/publication/401524518_Surveillance_Spacing_Screaming_and_Scabbing_How_Digital_Technology_Facilitates_Union_Busting).

<sup>2</sup> Id.

<sup>3</sup> See, e.g., National Labor Relations Board, Memorandum GC 23-02, *Electronic Monitoring and Algorithmic Management of Employees Interfering with the Exercise of Section 7 Rights* (rescinded 2025), available at <https://www.epi.org/database-of-biden-administration-actions-on-ai/>.

<sup>4</sup> See, e.g., Jo Constantz, ‘They Were Spying On Us’: Amazon, Walmart, Use Surveillance Technology to Bust Unions, NEWSWEEK (Dec. 13, 2021), <https://www.newsweek.com/they-were-spying-us-amazon-walmart-use->

hiring.<sup>5</sup> Some employers have developed data science tools to predict the likelihood of organizing efforts and launch early counter-organizing activities.<sup>6</sup> Researchers have documented specific employer tactics, including Amazon’s use of surveillance tools to surveil and predict Whole Foods stores where workers are likely to be interested in unionizing and Starbucks’ surveillance of worker social media activity and union-related posts.<sup>7</sup> Employers can also use these tools to isolate or prevent workers from taking breaks together or at all so that they lack the time or space to engage in union and other protected concerted activities at the workplace.

Artificial intelligence thus offers another tool to employers seeking to prevent unions and organizing in their workplaces. The Economic Policy Institute has found that employers were charged with violating federal law in over 40 percent of union election campaigns and with illegally firing workers for union activity in approximately 20 to 30 percent of campaigns—figures that likely undercount the full scope of violations.<sup>8</sup> Employers also spend more than \$400 million annually on union avoidance consultants.<sup>9</sup> As one academic has described it, “[n]early all corporations. . . will do almost anything, lawful or unlawful, to crush workers’ attempts to form a union.”<sup>10</sup>

Against this backdrop, then-National Labor Relations Board General Counsel Abruzzo’s 2022 memorandum provided critical guidance on how electronic monitoring and algorithmic management tools can unlawfully interfere with employees’ Section 7 and Section 8 rights under the NLRA.<sup>11</sup> The memo catalogued technologies increasingly used to monitor and manage workers, identified circumstances in which their use may constitute unfair labor practices, and called on the Board to adopt a new framework to protect workers from abusive surveillance.<sup>12</sup> Rescinding this guidance creates ambiguity for NLRB enforcement staff, employers, and workers at precisely the moment when AI and algorithmic tools are becoming more powerful and more prevalent in the workplace.

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surveillance-technology-bust-unions-1658603; Charlotte Garden, *Labor Organizing in the Age of Surveillance*, 63 ST. LOUIS U. L.J. (2018); Sarah Kessler, *Companies Are Using Employee Survey Data to Predict — and Squash — Union Organizing*, MEDIUM (July 30, 2020), <https://onezero.medium.com/companies-are-using-employee-survey-data-to-predict-and-squash-union-organizing-a7e28a8c2158>.

<sup>5</sup> Kessler, *supra* note 4.

<sup>6</sup> Reiber et al., *supra* note 1.

<sup>7</sup> Id.; Constantz, *supra* note 4.

<sup>8</sup> Celine McNicholas et al., *Unlawful: U.S. employers are charged with violating federal law in 41.5% of all union election campaigns*, Economic Policy Institute (Dec. 11, 2019), <https://www.epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns/>; John Logan, *Corporate union busting in plain sight: How Amazon, Starbucks, and Trader Joe’s crushed dynamic grassroots worker organizing campaigns*, Economic Policy Institute (Jan. 28, 2025), <https://www.epi.org/publication/corporate-union-busting/>.

<sup>9</sup> Celine McNicholas et al., *Employers spend more than \$400 million per year on ‘union-avoidance’ consultants to bolster their union-busting efforts*, Economic Policy Institute (Mar. 29, 2023), <https://www.epi.org/publication/union-avoidance/>.

<sup>10</sup> Logan, *supra* note 8 (citing Lee Fang, *The Evolution of Union Busting*, The Intercept (June 7, 2022)).

<sup>11</sup> Memorandum GC 23-02, *supra* note 3; see also Richard A. Bales and Katherine V. W. Stone, *The Invisible Web at Work: Artificial Intelligence and Electronic Surveillance in the Workplace*, 41 BERKELEY J. EMP. & LAB. L. 1 (2020).

<sup>12</sup> Memorandum GC 23-02, *supra* note 3.