NATIONAL LABOR RELATIONS BOARD

ROAR SHACK PRODUCTIONS And Tom MARSTON, on behalf of Jack of All Trades Contestants, And SCREEN PERFORMERS AND PRODUCTION GUILD	)	No. ST-25-03

DECISION AND ORDER

By Chairman Eagan and Members Scout and Casey:

Contestants from the television show Jack of All Trades ("Contestants") petitioned the National Labor Relations Board ("NLRB"), seeking an election to form a union under the Screen Performers and Production Guild ("SPPG"). SPPG joined the petition, and Roar Shack Productions ("Roar Shack") challenged the petition, asserting that the contestants were independent contractors rather than employees.

Shortly after their initial petition for an election, the Contestants also filed an unfair labor practice claim related to a mandatory meeting that Roar Shack executives led to express their opinion that the contestants had no need for union representation. Upon finding probable cause that Roar Shack had committed an unfair labor practice, the NLRB's General Counsel charged Roar Shack with a violation.

The Regional Director of Region 33 consolidated these questions for a hearing before Administrative Law Judge Damian Lindhagen. At the hearing, the administrative law judge made the threshold determination that the contestants are employees within the meaning of the

National Labor Relations Act ("NLRA"). The administrative law judge also found that the town hall meeting was a captive audience meeting in violation of the NLRA.

Pursuant to these findings, Administrative Law Judge Lindhagen issued an order commanding Roar Shack to cease and desist from its unfair labor practices.

Roar Shack filed a timely exception to the administrative law judge's decision. The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. The Board has considered the decision and the record in light of the exception filed and the parties' briefs. For the reasons set forth below, the Board affirms the judge's conclusions and adopts the recommended Order, except the Order attached below is substituted for that of the administrative law judge.

FACTUAL BACKGROUND

Roar Shack Productions ("Roar Shack") is a television company based in the state of Stone. Roar Shack has produced several hit TV shows over the last five years, including Yellow Dog and This Could Have Been an Email. Accordingly, viewership for its next major project was expected to be in the millions.

The instant dispute involves a reality television show that Roar Shack began developing in May 2023. In April 2023, the Writer's Guild of America ("WGA") voted to authorize a strike. Shortly after the strike began, in early May 2023, Roar Shack CEO Derrick Plainview called a special meeting with Roar Shack executives.

At the meeting, Plainview urged the executives to create a television show concept that would not require writers. Plainview explained his rationale for the need to create such a project:

> A lot of folks lost everything in 2008 when the stock market crashed. Not me. I lost it all a year earlier when those WGA pricks went on strike the year before. Couldn't get anybody to write you a birthday card with that going on. I tried to tell the higher ups at my old place that we could do something unscripted like a

> Big Brother. They wanted to wait it out; pretty soon, we were all waiting for our unemployment benefits. If we don't come up with something and come up with it fast, we won't be able to afford these fancy milkshakes anymore.
>
> Recorded Statement of D. Plainview.

At Plainview's insistence, Roar Shack executives developed the idea for a show called Jack of All Trades. The show, which is still in production in its first season, entails a competition between twenty-five Contestants from Stone,[1] with one contestant eliminated each week and one ultimate grand prize winner. Each week the contestants get a crash course on a different skill from experts in that field; the contestants then compete in a challenge related to that skill at the end of the week. The contestant who receives the highest score in a given week's challenge gets to choose among three skill categories from which the following week's challenge for all contestants. The contestant with the lowest score each week is eliminated. The show offers a grand prize of $100,000. Roar Shack's Jack of All Trades showrunners contemplated that if the show was successful, popular contestants would return for All-Star seasons in later production cycles.

Although each week's experts would demonstrate the proper technique at each challenge, the key concept of the show is to see how normal people would fare trying to pick up a skill on the fly. Prospective contestants for this first season were vetted to ensure that they did not already have a baseline level of skill for the activities that the show displayed. For instance, one skill challenge was to learn how to kick field goals like kickers from the National Football League, and the contestants were screened to ensure that none of them had played football at the high school level or higher.

[1] All twenty-five Contestants involved in the first and current season of Jack of All Trades are part of the claim brought to the NLRB below.

Roar Shack recruited exclusively from Stone, a state geographically similar in size to Massachusetts, because it sought to introduce a human interest element to the show by requiring contestants to live at the Shack Shack, a company owned housing unit adjacent to Roar Shack's filming set, during each Contestant's time on the show.

Roar Shack did not preclude Contestants from working during the filming of Jack of All Trades. Each Contestant signed a contract ("Contract") with the following disclaimer: "Participation in Jack of All Trades as a Contestant shall not be understood to create an employment relationship with Roar Shack Productions. All Contestants are considered independent contractors."

By the Contract, Contestants were allowed to come and go as they pleased when they were not required for filming, but the idea was to capture candid moments between contestants to create dramatic tension and character arcs. To achieve this, clearly denoted common areas (including a recreation room, a large kitchen, and an indoor gym) in the Shack Shack were recorded at all times using motion-activated cameras that recorded whenever anyone was in one of those spaces. Contestants were invited to give interviews with the showrunners. These interviews were designed to be open-ended, and Contestants would be asked about their strategy for the challenge, their personal backstory, and their rapport with the other Contestants, or lack thereof.

All contestants were provided a weekly stipend of $500, as well as housing in the Shack Shack and meals during each week in which they were filming.

The Contract also required Contestants to attend training related to each week's activity. Because the premise of the show was to see how normal people would pick up niche hobbies and difficult skills, they were only required to attend two "crash courses" per week, although

Contestants could voluntarily attend up to three more. Each crash course lasted four hours. Additionally, Contestants were required to be present at the weekly challenges, which lasted between one to two hours and were filmed on Saturdays. The Contract specified that, given the nature of filming such an involved show, Contestants would need to be available for filming at the producer's discretion, but they would receive anticipated filming schedules at the start of each week. Eliminated contestants continued to receive a stipend but were only expected to continue residing at the Shack Shack, give periodic interviews about their opinion on the other contestants, and attend a season finale event.

Each Contestant received a contestant handbook ("Handbook") that outlined expectations related to the show. The Handbook described the show as an "excellent opportunity to build your own brand." Although the Handbook disclaimed any guaranteed result, the Handbook noted that "in the digital age, everybody is an entrepreneur. Smart contestants will use their time with us to create a character you can sell." The Handbook also stated: "Remember the show is totally unscripted. You can speak your mind, on camera and off." The Handbook also contained three testimonials from participants on other Roar Shack reality shows who had gone one to amass significant Internet followings and secure endorsement deals after filming their shows. The Handbook strongly encouraged Contestants to participate in interviews and recommended attending all crash course training to maximize their chances of winning the competition.

Per the Contract, Roar Shack retained exclusive editorial control over any footage captured during filming, including footage captured in the Shack Shack common areas. Roar Shack editors and producers edited down each week's footage into one-hour episodes, which became available every following Thursday on Prime Video, then twenty-four hours later on Roar Shack's website. Under the Contract, Roar Shack further retained the right to dismiss any

contestant: “Our goal is to create good TV. As a contestant, you are the characters in that TV show, and we need your energy and personality. However, if at any point your conduct on or off set becomes illegal, disruptive to production, or incompatible with Roar Shack’s norms and standards, you may be dismissed, with or without warning.”

Filming began nearly two years after Plainview’s pitch, in March 2025, but partway through production on the first season, the Contestants began to consider the prospect of unionizing. They had become concerned with a variety of conditions related to the show’s filming. Logistical difficulties related to each week’s challenges meant that challenges and training often ran long, such that Contestants spent longer hours than anticipated on set for mandatory filming. Except for Contestants who had been eliminated, no Contestant worked at any other job while filming the show.

Contestants complained of other concerns. For example, a challenge requiring the contestants to perform an artistic aquatic dance routine was performed without medical staff on-site. A contestant slipped on the perimeter of the pool area and cut their leg, although they had no lasting injuries. In addition, Contestants expressed concern that Roar Shack would use its editorial control over Shack Shack common area footage to portray them poorly. They also stated that they feared that they would be removed from the show if they expressed these concerns to Plainview or other Roar Shack personnel.

Three weeks into production, Contestant George Dickinson reached out to a representative of Stone’s Screen Performers and Production Guild (“SPPG”), a nationwide union representing performers in television shows that lack conventional actors. SPPG and the Contestants filed a petition with the NLRB for an election to recognize SPPG as the bargaining representative for the Contestants.

When Roar Shack executives, including the Jack of All Trades showrunners, learned about the Contestants' plan to unionize, they set up a town hall meeting. All Contestants received a text from the Jack of All Trades Executive Producer, Evan Ross, that on May 9, all Contestants were required to attend a meeting to discuss the petition. The text read: "Meeting Friday at noon to address the union issue. All contestants are required to attend. There will be milkshakes, light refreshments."

Plainview attended the town hall meeting and personally addressed the Contestants. He reminded the Contestants that per the show Handbook, they were always encouraged to speak their minds, stating:

> Right now, I can talk with any one of you about any problem you guys are having. We're a family here, and my door is always open. The executive office is right down the street. But if this union gets in here, we'll have to go through them. No one likes a hall monitor, and that's what these SPPG folks will be for us.

Other Roar Shack executives spoke at the town hall as well. One commented that a union could "ruin the spirit of a competitive show where each person rises and falls on their own effort." Another stated that "if SPPG has its way, your prize money might become a subject of collective bargaining."[2]

Immediately following the meeting, Roar Shack executives made the decision to dismiss Dickinson, who had not been eliminated naturally from the competition, because he had "disrupted the production process in violation of contract by bringing in union agitators to organize independent contractors." The next day, the contestants separately filed a charge

[2] Neither the Contestants, SPPG, or the General Counsel alleges that any Roar Shack executive that spoke at the meeting made any statements that would be considered threats of reprisal.

alleging that the town hall meeting was an unfair labor practice, as was the dismissal of Dickinson.[3]

Roar Shack had actually been in negotiations with their separately unionized film crew throughout the filming of Jack of All Trades. Feeling that these rounds of bargaining with Roar Shack had not addressed their concerns, the film crew went on strike beginning May 12, 2025.[4]

Production on the show halted. Because Roar Shack had invested significantly in obtaining the tools and creating the spaces necessary to produce the show, they have not canceled the show outright and are attempting to convince the film crew to return to work.

DISCUSSION AND LEGAL CONCLUSIONS

1. Classification of Contestants as Employees or Independent Contractors

The National Labor Relations Act's ("NLRA") protections extend only to employees; the NLRA has been amended to explicitly exclude independent contractors. 29 U.S.C. § 152. The NLRA's current distinction between independent contractors and employees was intended to incorporate the common law of agency test for distinguishing independent contractors and employees. See NLRB v. United Ins. Co. of Am., 390 U.S. 254, 256 (1968).

Although no party disputes that the test to be applied is the common law test, that test is a multi-factor test with many elements, none of which are dispositive. See FedEx Home Delivery v. NLRB (FedEx I), 563 F.3d 492, 496 (D.C. Cir. 2009). The Supreme Court has outlined a non-exhaustive list of factors, including:

- The skill required;
- The source of the instrumentalities and tools;

[3] Roar Shack does not dispute that they terminated Dickinson because of his union activity; they rest their argument as to Dickinson on the ground that, as an independent contractor, it was not an unfair labor practice to terminate him.

[4] No elements of the film crew strike are themselves at issue in the instant case.

- The location of the work;
- The duration of the relationship between the parties;
- Whether the hiring party has the right to assign additional projects to the hired party;
- The extent of the hired party's discretion over when and how long to work the method of payment;
- The hired party's role in hiring and paying assistants;
- Whether the work is part of the regular business of the hiring party;
- Whether the hiring party is in business;
- The provision of employee benefits –and–;
- The tax treatment of the hired party.

Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323–24 (1992).

The parties involved in this matter represent both sides of a long-running dispute between different NLRB majorities that have, in an attempt to clarify the common law test, set forth one of two ultimate inquiries that govern the common law factors. See FedEx, 563 F.3d at 496-97. Initially, the NLRB held that the animating inquiry or focus of the common law test was the degree to which the putative employer controls the manner and means by which the employee performs their work. See FedEx, 563 F.3d at 496-97. Under that "right to control" approach, "the meta-question, as it were, focused on the sorts of controls employers could use without transforming a contractor into an employee." Id. In another case, however, an NLRB with a Republican majority offered a different ultimate inquiry: although all the common law factors remained in consideration under this second approach, the guiding question in close cases was whether the putative employee had entrepreneurial opportunities for gain or loss that made them

more like independent contractors. See FedEx, 563 F.3d at 497. Under this "entrepreneurial opportunities" approach, "an important animating principle by which to evaluate those factors in cases where some factors cut one way and some the other is whether the position presents the opportunities and risks inherent in entrepreneurialism." Id.

Subsequently, the NLRB has adopted and relied upon both variations of the common law test at different points in time. The Atlanta Opera Inc. & Make-Up Artists & Hair Stylists Union, Local 798, 372 NLRB No. 95, at *1 (June 13, 2023). The NLRB's most recent position is that the focus on entrepreneurial opportunities (the SuperShuttle standard) is unfaithful to the common law test. Atlanta Opera, 372 NLRB at *4-5 (June 13, 2023). In Atlanta Opera, the NLRB majority emphasized that "entrepreneurial opportunities" is not even one of the original restatement factors. Id. Moreover, focusing on entrepreneurial opportunities creates a myopic focus on one factor that allows selective NLRB majorities and courts to broaden the independent contractor exception and exclude workers from coverage by cherry picking facts related to entrepreneurship. Id. This results in a test that runs contrary to the Supreme Court's admonition that "administrators and reviewing courts must take care to assure that exemptions from NLRA coverage are not so expansively interpreted as to deny protection to workers the [NLRA] was designed to reach." Holly Farms Corp. v. NLRB, 517 U.S. 392, 399 (1996), cited in Atlanta Opera, 372 NLRB at *15 n.72.

The two FedEx cases illustrate how the two tests work differently on the same operative facts to reach different conclusions. The D.C. Circuit in FedEx I focused on the theoretical ability FedEx drivers had to subcontract their routes and even to sell them. See FedEx I, 563 F.3d at 499-500. That court found that because the drivers had an independent opportunity to gain or lose, that opportunity overwhelmingly favored independent contractor status. Id. In contrast, the

NLRB focused in FedEx II on how FedEx required drivers to make their vehicles available from Tuesday to Saturday, configured all their services areas, controlled the volume of packages to be delivered, supplied uniforms and equipment, imposed strict guidelines regarding conduct, and exercised other strong indicia of control that the drivers were considered employees. FedEx Home Delivery (Fedex II), 361 NLRB 610, 620-23 (2014). The FedEx II NLRB did consider the entrepreneurial opportunity to sell routes and subcontract work but did not treat it as a central inquiry, and ultimately found the factor unpersuasive because only two route sales had ever been recorded. Id.

From the perspective of the Atlanta Opera majority, Fedex II standard represents a return to the actual common law test. Atlanta Opera, 372 NLRB at *25-26. However, the Atlanta Opera decision overrules the recently adopted SuperShuttle standard, which issued several years after FedEx II, and may also conflict with the D.C. Circuit's decision in FedEx I. Atlanta Opera, 372 NLRB at *25-26; SuperShuttle Dfw, Inc, 367 NLRB No. 75, at *1 (Jan. 25, 2019).

According to the SuperShuttle majority, the NLRB had attempted in FedEx I to import an overly inclusive economic realities test, such as the one outlined in NLRB v. Hearst Publ'ns, 322 U.S. 111, 120-21 (1944); SuperShuttle, 367 NLRB at *11. This was impermissible, however, because the NLRA had specifically been amended to import the common law test, rather than the more broadly inclusive economic realities test, for distinguishing employees and independent contractors. Id. The D.C. Circuit has expressly adopted the focus on entrepreneurial opportunities favored in SuperShuttle. Corp. Express Delivery Sys. v. NLRB, 292 F.3d 777, 780 (D.C. Cir. 2002); see also FedEx I, 563 F.3d at 496-97.

In contending that its Contestants are not employees, but are independent contractors, Roar Shack asks this Board to abandon Atlanta Opera and return to the SuperShuttle standard. It

argues that focusing on whether a worker has significant entrepreneurial opportunities for gain or loss creates a more accurate proxy for the sort of independence that is contemplated when one considers the independent contractor. Id. It further argues that a focus on entrepreneurial opportunities appropriately refines the common law factors to eliminate some absurd results that could arise when the focus is instead on the right to control work performance. Corp. Express, 292 F.3d at 780. Finally, it contends that this approach best comports with the NLRA, which was expressly amended to limit the NLRB to considering only the common law factors following the Supreme Court's decision in Hearst, which employed a broader approach. See NLRB v. United Ins. Co. of Am., 390 U.S. 254, 256 (1968).

We disagree. Atlanta Opera is not only the NLRB's current approach, it is more faithful to the common law test of agency as it considers all the factors derived from the Restatement of Agency in addition to other relevant factors that bear on the distinction between employees and independent contractors. Atlanta Opera, 372 NLRB at *17. We note that this approach does not ignore entrepreneurial activity; it is still one factor to consider. See Lancaster Symphony Orchestra v. NLRB, 822 F.3d 563, 569 (D.C. Cir. 2016). It is simply not the focal point.

Under this approach, the relevance of entrepreneurial opportunities is whether that factor suggests that the worker is effectively operating a distinct business. Atlanta Opera, 372 NLRB No. 95, at *17. Here, that is simply not the case. Additionally, Roar Shack attempts to analogize to the famous pickle cases to argue that it does not control the Contestants' work to the extent that would render them employees. See Donovan v. Brandel, 736 F.2d 1114, 1119 (6th Cir. 1984). It contends that just as the field's owner in that case did not actually tell the sharecroppers who rented the fields how to pick pickles, here, Roar Shack does not direct the Contestants on how to compete or what to say or do during filming. This purported minimal direction, Roar

Shack asserts, means that it lacks the type of control to render the Contestants employees rather than independent contractors.

But to analogize to another pickle case: there is no show without the Contestants. See Sec. of Labor v. Lauritzen, 835 F.2d 1529, 1537-38 (7th Cir. 1987) ("It does not take much of a record to demonstrate that picking the pickles is a necessary and integral part of the pickle business."). Conversely, Roar Shack retains the right to remove Contestants from the show, while also retaining full editorial control over how they are portrayed. Taking the factors from the Restatement into account, conditions on the show point to an employment relationship under the common law test.

Moreover, even if we focused on entrepreneurial activities, as we would under the SuperShuttle standard, Roar Shack's Contestants still look more like employees than independent contractors. Roar Shack contends that there are ample opportunities for profit and loss depending on each Contestant's skills and branding. See FedEx I, 563 F.3d at 500. But to the extent that the Contestants possess independent personalities that may play better or worse on a TV show, those independent differences and choices are swallowed by Roar Shack's editorial control. For these reasons, we agree with the administrative law judge that under either approach, the Contestants are employees under the NLRA.

2. Captive Audience Meetings

The NLRA codifies that "[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. The NLRA further provides that it "shall be an

unfair labor practice for an employer . . . to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title." 29 U.S.C. § 158(a)(1).

To give practical effect to the NLRA's protections, Congress has tasked the NLRB with "the work of applying the [NLRA]'s general prohibitory language in the light of the infinite combinations of events which might be charged as violative of its terms." Republic Aviation Corp. v. NLRB, 324 U.S. 793, 798 (1945). The Supreme Court has stated that it falls to the NLRB to "develop and apply fundamental national labor policy." Beth Israel Hosp. v. NLRB, 437 U.S. 483, 500 (1978). Asserting that authority, the NLRB announced on November 13, 2024, that captive audience meetings, defined as mandatory, employer-led meetings at which the employer expresses its views on unions, are unlawful and in violation of the NLRA. Amazon.com Servs. LLC, 373 NLRB. No. 136, at *12 (Nov. 13, 2024). Roar Shack concedes that here, the town hall meeting that Contestants attended was a "captive audience meeting" under this definition, but it contends that such meetings are protected by the First Amendment and do not violate the NLRA.

The NLRB's Amazon decision overruled the NLRB's own prior determination that captive audience meetings did not in fact violate the NLRA. See Babcock & Wilcox Co., 77 NLRB 577, 578 (1948). Babcock & Wilcox, in turn, had repudiated an even earlier Board decision that found that employer meetings regarding unions at which attendance was mandatory were coercive due to the economic imbalance between the employer and employee. See Clark Bros. Co., Inc., 70 NLRB 802, 830 (1946). The NLRB majority in Babcock & Wilcox concluded that the "compulsory attendance" doctrine announced in Clark Bros. could no longer be supported given "the language of Section 8 (c) [sic] of the amended Act, and its legislative history." Babcock & Wilcox, 77 NLRB at 578. The Section 8(c) to which the Babcock & Wilcox

majority referred was 29 U.S.C. § 158(c), known as the NLRA's Free Speech Proviso or Free Speech Guarantee. Section 158(c) provides:

> 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 subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

Returning to the Amazon decision that subsequently overruled the Babcock & Wilcox decision, the NLRB majority in Amazon observed that beyond its single statement that "the language of Section 8 (c) [sic] of the amended Act, and its legislative history" did not support a finding that captive audience meetings were unlawful, the Babcock & Wilcox decision offered no support for its ultimate conclusion that captive audience meetings did not violate the NLRA. Amazon.com, 373 NLRB at *11. Because it found that the Babcock & Wilcox Board failed to properly explain how captive audience meetings expressly did not violate the NLRA, the Amazon majority decided to reexamine the issue, taking into account the history of Section 8(c) and First Amendment doctrine. Id.

In so doing, the Amazon majority found that an employee's enjoyment of their rights under Section 7, or 29 U.S.C. § 157, requires that the employee be free from intrusion in the exercise of their rights, to the extent that an employee gains an inherent right to privacy and autonomy from employer surveillance. Amazon.com, 373 NLRB at *20. As such, the Amazon majority held that "[c]aptive-audience meetings intrude on this protected sphere of employee privacy and autonomy and reasonably tend to interfere with employees' exercise of Section 7 rights . . . ." Id.[5]

[5] The Amazon decision is now on appeal for judicial review in the Eleventh Circuit Court of Appeals. Amazon.com Servs., LLC v. NLRB, No. 24-13819 (11th Cir. June 3, 2025).

Applying Amazon to this case, the administrative law judge found that Roar Shack committed an unfair labor practice when it called its town hall meeting and required the Contestants to attend. Roar Shack argues, however, that a ban on mandatory workplace meetings at which an employer speaks on certain issues, like unions, is a content-based speech restriction in violation of the First Amendment. See Honeyfund.com Inc. v. Governor, 94 F.4th 1272, 1278 (11th Cir. 2024). Specifically, Roar Shack contends that because the NLRA does not prohibit other mandatory employer-held meetings, interpreting it as prohibiting mandatory employer-led meetings regarding unions amounts to content discrimination. It points to the Supreme Court's decision in Carey v. Brown, in which the Court struck down an ordinance that banned residential picketing on any subject except labor relations because the exemption rendered that ordinance content discriminatory. 447 U.S. 455, 461-62 (1980). But see Hill v. Colorado, 530 U.S. 703, 720-23 (2000) (upholding as content-neutral a Colorado ban on discussing abortion with those near a clinic). A prohibition on captive audience meetings, however, is not a ban on employer speech. An employer may still lead meetings to provide the employer's view on unionization; however, these meetings must be voluntary and contain no threat of reprisal, express or implied. Amazon.com, 373 NLRB at *29.

Even if this prohibition amounted to a content-based ban, however, which Amazon suggests it is not, the First Amendment does not necessarily protect someone who compels an unwilling listener to listen. "The unwilling listener's interest in avoiding unwanted communication has been repeatedly identified in our cases." Hill, 530 U.S. at 716. Roar Shack correctly points out that the unwilling listener cases traditionally focus on a special right to avoid unwanted messages in the home, but we find that an employee at work, where most individuals are required to spend a significant amount of time, and especially where these Contestants were

required to spend all of their time, similarly has a unique right to be free from coercion. NLRB v. Gissel Packing Co., 395 U.S. 575, 617 (1969).

Moreover, a ban on employer captive audience meetings is not prohibited by the unambiguous text of § 158(c). Amazon.com, 373 NLRB at *20-28. Plain, unambiguous statutory text ends any inquiry into that text's meaning. See Bostock v. Clayton Cnty., 590 U.S. 644, 673-74 (2020). Roar Shack contends that 29 U.S.C. § 158(c) provides in its plain language that "expressing" views concerning unions shall not constitute evidence of an unfair labor practice. § 158(c). Roar Shack argues that at the meeting, executives merely stated their sincere views about unions, and that the Contestants themselves admit those statements contained no threats of reprisal. Mandatory meetings are a common feature of the modern American workplace, and prohibiting employers from holding such meetings would deprive employers of the right to speak merely because "an employer wants to communicate a message badly enough to make meeting attendance mandatory." Honeyfund, 94 F.4th at 1282. We find, however, that the analysis regarding whether § 158(c) protects captive audience meetings begins and ends with the statute's text because the text unambiguously does not mention, and therefore does not embrace, captive audience meetings. Amazon.com, 373 NLRB at *23. There is a clear distinction between expressing views on union matters and conduct that forces employees to listen to those views. See Gissel, 395 U.S. at 617.

Finally, Roar Shack contends even if the language were not clear, the best reading of 29 U.S.C. § 158(c)'s legislative history affirms that § 158 (c) protects meetings where the employer expresses its view on unionization, even if attendance at that meeting is mandatory. See Amazon.com, 373 NLRB at *28 (Kaplan, Board Member, dissenting). It argues that 29 U.S.C. § 158(c) goes even further than the First Amendment in protecting the expression of opinions in

the labor relations context. See Chamber of Com. v. Brown, 554 U.S. 60, 67–68 (2008). But the legislative history of § 158(c) indicates only that Congress intended to implement the First Amendment and prevent the NLRB from attributing anti-union animus to companies based solely on anti-union statements. Linn v. United Plant Guard Workers of Am., Loc. 114, 383 U.S. 53, 62 n.5 (1966). The congressional record does not indicate that § 158(c) was intended to protect anything beyond the employer's bare right to speak its opinion without that opinion being used as evidence of an unfair labor practice in and of itself. See Amazon.com, 373 NLRB at *27.

Section 158(c) codifies First Amendment protections, but the First Amendment right to speak does not come with an accessory right to an audience, and certainly not with the right to have an audience vulnerable to the speaker. See Hill, 530 U.S. at 716-17. For these reasons, we affirm the administrative law judge's finding that Roar Shack committed an unfair labor practice in violation of the NLRA.

CONCLUSION

For these reasons, the Board affirms the administrative law judge's conclusions and adopts the recommended Order, except the Order attached below is substituted for that of the administrative law judge.

So ordered.

Dated August 15, 2025

ORDER

The National Labor Relations Board orders that the Petitioner, Roar Shack Productions, Stone City, Stone, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Continuing to classify the contestants of Petitioner's reality television production, Jack of All Trades, as independent contractors under the National Labor Relations Act.

(b) Holding any further mandatory meetings at which Petitioner expresses views on the topic of Unionization.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Classify the contestants of Roar Shack's reality television production, Jack of All Trades, as employees under the National Labor Relations Act and afford them all relevant protections therein.

(b) Reinstate Contestant George Dickinson.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Petitioner has taken to comply.

UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

ROAR SHACK PRODUCTIONS, Appellant, v. NATIONAL LABOR RELATIONS BOARD, Appellee.	No. ST-25-03

NOTICE OF APPEAL

Roar Shack Productions ("Roar Shack") petitioned this Court for review of the National Labor Relation Board's order dated August 28, 2025. The National Labor Relations Board ("NLRB") cross-applied for enforcement of its order. The Court has jurisdiction over Roar Shack's petition for review and the NLRB's cross-application for enforcement of its order pursuant to Section 10(e) and (f) of the National Labor Relations Act, 29 U.S.C. § 160(e) & (f). This Court will consider all issues raised in the court below.[6]

Matthew Comeau
Clerk

Dated: September 25, 2025[7]

[6] The Fifth Circuit recently upheld a preliminary injunction prohibiting the NLRB from prosecuting unfair labor practice complaints while courts consider whether the agency's structure is constitutional. Space Expl. Techs. Corp. v. NLRB, No. 24-10855, 2025 WL 2396748, at *14 (5th Cir. Aug. 19, 2025). The Fifth Circuit's decision does not impact the NLRB's authority to act in this jurisdiction. Moreover, Roar Shack does not raise any constitutional challenge to the NLRB's structure, and this Court will not consider such a challenge as part of this proceeding.

[7] Advocates may not use any decisions, orders, cases, secondary sources, or other sources published after this date.