

## Employer Captive Audience Speeches Under Fire By Judd Lees

Organized labor has wasted little time on the national and local level in cashing in its political chits to reverse the growing loss of members over the last decades. Rather than point to self-induced injuries, half a century of state and federal laws providing employee protections without the need for union membership, and the globalization of labor, unions blame their losses on alleged employer coercion aimed at keeping unions out at all costs. According to unions, a key enemy of employee exercise of free will is the so-called “captive audience speech” in which employers pay employees to attend company meetings addressing and refuting union sales pitches. On January 30, 2009, President Obama signed two Executive Orders severely restricting the rights of federal contractors to engage in this activity and the Washington State Legislature is contemplating passage of a so-called Worker Privacy Act which would make such meetings illegal.

The first Executive Order, entitled “Notification of Employee Rights under Federal Labor Laws,” revokes the so-called *Beck* notice requirements and requires qualifying federal contractors to post a written notice advising employees of their rights to bargain collectively, to engage in freedom of association, and to designate a bargaining representative. The notice will be prepared by the Secretary of Labor within 120 days. The Second Executive Order, entitled “Economy in Government Contracting,” disallows costs associated with employer captive audience speeches under federal cost-reimbursement contracts. The Order will require non-union contractors participating in federal cost-reimbursement contracts who wish to exercise their free speech rights under the National Labor Relations Act, to utilize accounting procedures to segregate these costs—whether for retention of outside counsel or employee wages for meeting attendance.

The proposed state Worker Privacy Act, Senate Bill 5446, is more direct and would prohibit employers from requiring employee attendance at company meetings or discussions regarding “political or religious matters.” The ostensible target of the proposed state legislation is the type of company meetings held by Wal-Mart prior to the presidential election aimed at convincing employees of the dangers of voting for Obama. However, somewhat hidden in the legislation is the definition of “political matters” to include matters directly related to “labor or other mutual aid organizations.” Thus, the proposed legislation would render illegal under Washington law, the employer exercise of free speech rights under the National Labor Relations Act in the “captive audience” setting. The bill is currently before the Washington Senate Committee on Labor, Commerce & Consumer Protection.