



October 31, 2022

Senator Patty Murray
Chair
U.S. Senate HELP Committee
Washington, DC 20510

Representative Robert Scott
Chair
U.S. House Education & Labor Committee
Washington, DC 20515

Senator Richard Burr
Ranking Member
U.S. Senate HELP Committee
Washington, DC 20510

Representative Virginia Foxx
Ranking Member
U.S. House Education & Labor Committee
Washington, DC 20515

Dear Senators Murray and Burr and Representatives Scott and Foxx:

On April 1, 2022, I wrote to ask that your committees investigate the National Labor Relations Board (NLRB) General Counsel's suit against Amazon.com, Inc., seeking reinstatement of a former employee at Amazon's Staten Island facility who was fired nearly two years ago for shouting sexually charged and profane obscenities at a female coworker over a bullhorn at their shared workplace. In that letter, I argued the filing of that suit was at odds with federal civil rights laws. I also questioned the timing of that suit, which gave the appearance of an attempt to influence the outcome of a pending union representation election. Unfortunately, the General Counsel continues to target Amazon. Her recent decision to file a meritless complaint alleging that CEO Andy Jassy was "interfering with, restraining, and coercing employees" smacks of little more than a politically driven prosecution of one particular employer. NRF respectfully requests, once again, that you use your oversight powers to investigate her objectives and tactics.

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and internet retailers from the United States and more than 45 countries. Retail is the nation's largest private-sector employer, supporting one in four U.S. jobs — 52 million working Americans. Contributing \$3.9 trillion to annual GDP, retail is a daily barometer for the nation's economy.

On October 27, 2022, General Counsel Jennifer Abruzzo filed a complaint that Jassy violated the National Labor Relations Act (NLRA) by discussing his opinion of the ongoing union effort to organize Amazon facilities. Here below are his verbatim comments in relevant part.

First, from his interview with Andrew Ross Sorkin on CNBC¹ on April 14, 2022:

Well, I mean, I'd say a few things. You know, first of all, of course, it's employees' choice whether or not they want to join a union. We happen to think they're better off not doing so for a couple of reasons at least. You know, first, at a place like Amazon that empowers employees, if they see something they can do better for customers or for themselves, they can go meet in a room, decide how to change it and change it. That type of empowerment doesn't happen when you have unions. It's much more bureaucratic, it's much slower. I also think people are better off having direct connections with their managers. You know, you think about work differently. You have relationships that are different. We get to hear from a lot of people as opposed to it all being filtered through one voice. If you want to keep the construct that we've had for this long, you have to have, you know, competitive and compelling benefits though for employees and it's why we championed the \$15 minimum wage a few years ago and we're up over \$18 now. It's why we have full insurance, why 401(k), 20 weeks of paid leave and our Career Choice Program where in our fulfillment center for our employees who want to get a college education, we'll pay for their full tuition, so those things really matter. The one thing regardless of how it all evolves is we just won't compromise on the customer experience. That for us, you know, is paramount...

Second, from his interview with Bloomberg's Emily Chang and Matt Day² on June 8, 2022:

It's up to Amazon workers whether to join a union, Jassy said, echoing US labor law that codifies that right. "We happen to think they're better off without a union," he added, saying it's easier for managers to get feedback from employees and for teams to make improvement on the fly under the current regime. "We need to continue to provide the right benefits and we need to continue to work on safety, and that's our intention," he said.

NRF believes the statements by Jassy were in fact protected by the NLRA as well as the First Amendment of the Constitution. The NLRA specifically states "the expressing of any views, argument, or opinion" about unionization shall not constitute an unfair labor practice so long as it "contains no threat of reprisal or force or promise of benefit." Additionally, the Board has routinely

¹ Andrew Ross Sorkin, "CNBC Exclusive: CNBC Transcript: Amazon CEO Andy Jassy Speaks with CNBC's Andrew Ross Sorkin on 'Squawk Box' Today," CNBC, April 14, 2022. <https://www.cnbc.com/2022/04/14/cnbc-exclusive-cnbc-transcript-amazon-ceo-andy-jassy-speaks-with-cnbc-andrew-ross-sorkin-on-squawk-box-today.html>

² Emily Chang and Matt Day, "Amazon's CEO Talks Present and Future Challenges, Opportunities," Bloomberg U.S. Edition, June 8, 2022. <https://www.bloomberg.com/news/articles/2022-06-08/amazon-s-ceo-talks-present-and-future-challenges-opportunities#xj4y7vzkg>

upheld the right of employers to express their views about unionization, and federal courts have consistently agreed with that interpretation of the NLRA. Since 1941, the Supreme Court has repeatedly held that an employer may express “its view on labor policies or problems.” As recently as 2008, the Court made clear that Congress intended “to encourage free debate on issues dividing labor and management,” noting that the NLRA’s protections of employers’ right to express their views “merely implements the First Amendment.”

While reasonable people may disagree about the line between permissible and impermissible speech under the NLRA, the General Counsel’s complaint suggests she intends to erase this line entirely. In the wake of the complaint, which was widely covered by the press, employers rightly wonder whether they can speak about unionization at all, despite their legally protected right to do so. Thus, whether by design or happenstance, the General Counsel’s actions have chilled speech and will reduce the “free debate” the NLRA and the First Amendment protect and encourage. Americans do not lose their First Amendment rights when they become CEOs of a company disfavored by labor union leaders.

The General Counsel’s decision to ignore the law regarding Amazon is not surprising. For whatever reason, she has abandoned any attempt to maintain even a veneer of impartiality when it comes to this particular employer. She recently allowed herself to be publicly photographed arm-in-arm with Amazon Labor Union (ALU) organizers.³ The General Counsel, in the language of the NLRA, must “exercise general supervision over all attorneys employed by the Board and over the officers and employees in the regional offices.” As such, she has general supervision over every Board agent and attorney involved in pending ALU cases. By embracing these individuals, she certainly appears to be endorsing their organizing efforts. Board attorneys who handle ALU cases could reasonably infer that siding with the union, regardless of the merits of a particular charge or complaint, will be looked upon with favor by the General Counsel.

In conclusion, the General Counsel continues to lack proper judgement and discretion. Her decision to seek reinstatement of a worker who shouted sexually charged and profane obscenities at his female coworker, now combined with these recent actions, raises questions about whether she is able to serve in the Federal Government effectively or impartially. We reiterate our request that Congress investigate the General Counsel’s choices with respect to these matters.

Sincerely,



David French
Senior Vice President
Government Relations

³ See: <https://twitter.com/SethGoldstein13/status/1581827625060012032?t= MDspfNMDPB2KUDtOqTusA&s=09>